



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### **Usage guidelines**

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

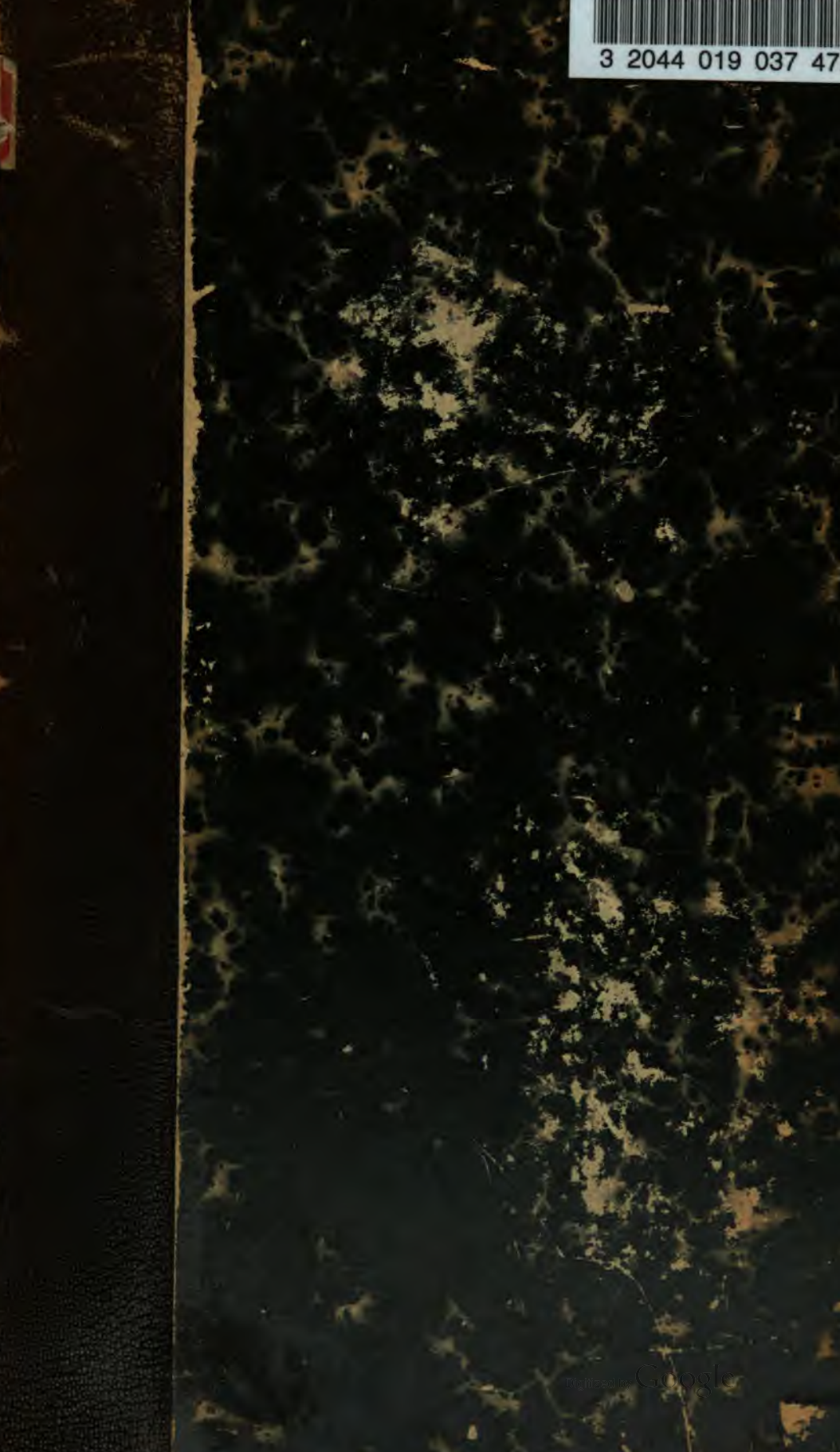
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### **About Google Book Search**

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

3 2044 019 037 47



4513603,6 Bd. April, 1887.

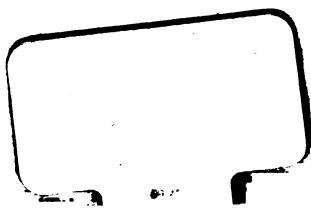


Harvard College Library

FROM

*Various Gifts.*

*4 June, 1845 - 11 Dec. 1851.*











**TRIAL**  
OF  
**JOHN FRANCIS KNAPP**

AS PRINCIPAL IN THE SECOND DEGREE

FOR THE

**MURDER**

OF

**CAPT. JOSEPH WHITE,**

BEFORE THE

*Supreme Judicial Court*

OF THE

**COMMONWEALTH OF MASSACHUSETTS,**

AT A SPECIAL SESSION,

COMMENCED AT SALEM, JULY 20, 1830.

---

**REPORTED FOR THE PUBLISHERS.**

---

**Boston:**

**PUBLISHED BY DUTTON AND WENTWORTH,**

No. 4 Exchange Street.

1830.

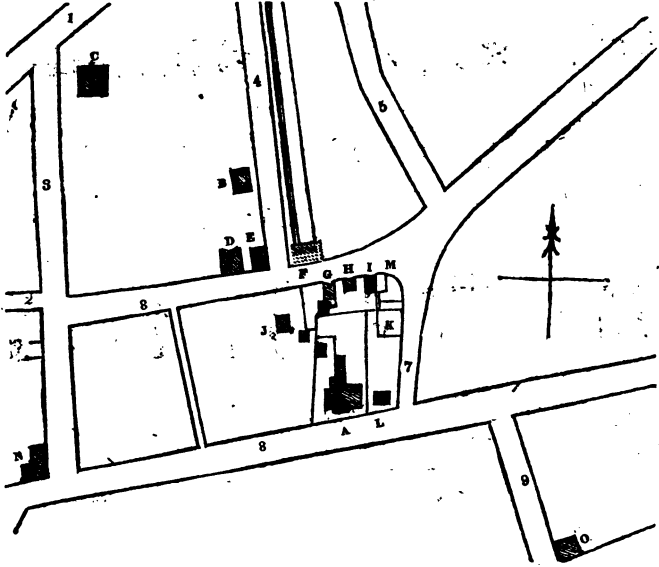


~~VII, 3892~~

4813603.6

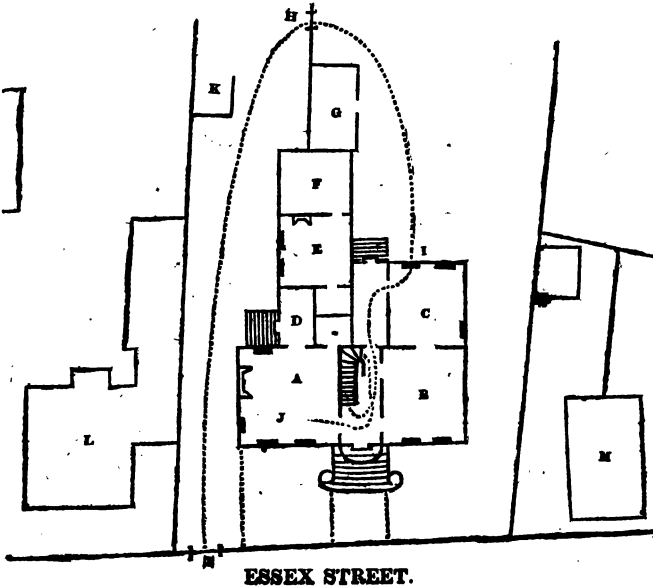
### PLATE I.

Plan of the Streets in the Vicinity of Capt. White's House, Salem.



### PLATE II.

Plan of the House of Capt. Joseph White, Essex Street, Salem.



## KEY TO PLATE I.

- |   |  |   |                     |
|---|--|---|---------------------|
| A | The residence of the late Joseph White, Esq. | 1 | North River Road.   |
| B | Howard street Church.                        | 2 | Church Street.      |
| C | Jail.  | 3 | St. Peter's Street. |
| D | Mr. Southwick's House.                       | 4 | Howard Street.      |
| E | Mr. Downing's House.                         | 5 | William Street.     |
| F | Ropewalk Steps.                              | 6 | Brown Street.       |
| G | J. Potter's House.                           | 7 | Newbury Street.     |
| H | B. Henderson's House.                        | 8 | Essex Street.       |
| I | D. Bray's House.                             | 9 | Union Street.       |
| J | Green House.                                 |   |                     |
| K | Mr. Andrews' House.                          |   |                     |
| L | T. Deland's House.                           |   |                     |
| M | The Post.                                    |   |                     |
| N | Essex Coffee House.                          |   |                     |
| O | M. Newport's House.                          |   |                     |

---

## KEY TO PLATE II.

- |    |   |   |   |
|----|---|---|---|
| A  | Dining Room.  | J | Represents the Chamber occupied by Mr. White, over the dining room; and the dotted lines show the track of the Murderer, who had to pass up one pair of stairs to arrive at the room. |
| B  | Front Parlor.   | K | Mr. White's Stable.   |
| C  | Back Parlor.  | L | Mr. Gardiner's House.   |
| D  | Entry Steps.  | M | Mr. Deland's House.   |
| E  | Kitchen.  |   |   |
| F  | Wash Room.  |   |   |
| G  | Wood House.   |   |   |
| HH | Gate through which the murderer is supposed to have passed to gain access to the house. |   |   |
| I  | The window at which he entered.   |   |   |

---

## BLUDGEON

FOUND UNDER THE STEPS OF HOWARD STREET CHURCH.



† Loaded with Lead.



## TRIAL FOR MURDER.

---

A Special Session of the Supreme Judicial Court, commenced at SALEM on Tuesday, July 20, 1830. Present—*Chief Justice Parker, Judges Putnam, Wilde and Morton; Attorney General Morton, and Solicitor General Davis* appeared for the Commonwealth. After the usual proclamation, the Grand Jurors were called. The *Hon. Nathaniel Silsbee* was excused from serving, on account of a family connexion with one of the persons accused with the murder of *Mr. White*. The Grand Jurors being then empanelled and sworn, the Chief Justice pronounced his charge. He referred to the occasion which called them together, instructed them as to some points of law affecting the Trial upon which the Court was about to enter, and most urgently besought them and all interested to divest themselves of prejudice and preconceived opinions.

The Grand Jury then retired and made choice of *Eben. Shilaber, Esq., of Danvers*, as Foreman. The *Rev. Mr. Cleaveland* officiated as Chaplain.

FRIDAY, JULY 23d.—Present, Chief Justice Parker, and Judges Putnam and Wilde. The Chief Justice remarked that the "Court were decidedly of opinion that the proceedings ought not to be published from day to day, as they would give only imperfect information. What passes one day may be essentially modified by the doings of a subsequent day. There may be no objection to publishing the state of the case as it advances;—but there must be no publication of *evidence* before the trials are concluded.

The Grand Jury came into court with several Bills they had found. *John Francis Knapp, George Crowninshield and Joseph Jenkins Knapp, jr.* were placed at the Bar, and the first indictment was read to them by *John Prince, Jr. Esq., Clerk of the court*. By the first count of this indictment, John F. Knapp was charged with having committed the murder of Capt. Joseph White with a bludgeon, and Joseph J. Knapp, jr and Geo. Crowninshield were charged with being accessories before the fact, and with having counselled, hired and procured the said J. F. Knapp to commit the said felony and murder.

The second count is similar to the first, except that it charges the murder to have been committed with a dirk.

The third count, charges the murder to have been committed by Richard Crowninshield, Jr., late of Danvers, machinist, and

that said Richard afterwards, before any conviction, feloniously committed suicide, and so can be no farther prosecuted. It then further alleges that at the time of said murder, John F. Knapp was present aiding and abetting, and that Geo. Crowninshield and Joseph J. Knapp, Jr., by counselling, hiring and procuring, were accessories before the fact, to both Richard Crowninshield and John F. Knapp.

To this indictment they severally pleaded "NOT GUILTY." And at the request of John Francis Knapp and Joseph Jenkins Knapp, Jr., *Franklin Dexter* and *William H. Gardiner, Esquires, of Boston*, were assigned to them as Counsel; and *Samuel Hoar, Esq., of Concord*, and *Ebenezer Shillaber, Esq., of Salem*, were assigned to Geo. Crowninshield as Counsel, at his request.

Tuesday, July 27, was assigned for the Trial.

The prisoners desired separate trials, and if any other indictment had been found, requested that it might be read to them.

Another indictment was then read, charging that the murder was committed by Richard Crowninshield, Jr., with a bludgeon, and that Joseph J. Knapp, Jr., John F. Knapp, and Geo. Crowninshield, before the fact, did incite, counsel and hire the said Richard, to commit the said murder. It then goes on to allege, that afterwards and before any trial or conviction, the said Richard, as a felon of himself, committed suicide, so that no prosecution or conviction of said Richard, can ever take place. A second count, charges the same facts, except that it alleges the mortal wounds to have been inflicted with a different weapon.

*Benjamin Selman* and *Daniel Chase* were then set to the Bar, and it appearing that the indictments heretofore found against them, had been *nol. pross'd* by the Attorney General, and there being no new indictment against them, on motion of their counsel, *Mr. Shaw*, they were ordered to be discharged, and were immediately liberated.

TUESDAY, JULY 27—Court adjourned until Tuesday, Aug. 3d, on account of the sudden death of *Chief Justice Parker*.

TUESDAY, AUG. 3.—*Mr. Webster* appeared on the part of the Government.

The Grand Jury presented two new Bills, the Attorney General having entered a *nol. pros.* upon the indictments previously found. J. F. Knapp, J. J. Knapp, Jr., and George Crowninshield were arraigned, and the first indictment read. The first count charged John Francis Knapp with having committed the murder with a *bludgeon*, and Joseph Jenkins Knapp, jr. and Geo. Crowninshield with being accessories before the fact. John F. Knapp is also charged with having committed the murder with a *dirk*; and J. J. Knapp, jr. and Geo. Crowninshield with being accessories as before. In another count, Richard Crowninshield, Jr., is charged as Principal, J. F. Knapp with being present, aiding and abetting, and J. J. Knapp, jr. and Geo. Crowninshield

with having hired and counselled. Another count charges the murder to have been committed by a person unknown to the Jurors, and that J. F. Knapp was present, and that J. J. Knapp, jr. and George Crowninshield did hire and counsel. To this indictment John F. Knapp pleaded not guilty. J. J. Knapp, jr. and George Crowninshield were then remanded, his counsel holding that they could not be held to plead until conviction of some principal.

*Mr. Dexter.*—Is there not another indictment against the prisoner at the Bar, as accessory?

*Judge Putnam.*—There are two Bills before the Court; the prisoner has plead to one; he has not been arraigned upon the other.

*Mr. Gardiner.*—The prisoners counsel had moved for a list of the witnesses used before the Grand Jury. The Solicitor General had promised the counsel a copy, but it had not been furnished.

*Judge Putnam,* enquired the object of counsel in making this observation.

*Mr. Gardiner,* apprehended that the prisoner had a right to be informed who were the witnesses that would confront him.

*Judge Putnam.*—Do you demand a list of witnesses?

*Mr. Gardiner.*—Yes, Sir.

*Attorney General.*—This has not been customary.

*Judge Putnam.*—The Court sees no objection. The demand is reasonable. As a matter of rigid practice the prisoner should have the list.

*Attorney General.* The list will be furnished if the Court orders it.

*Judge Putnam.* The Court does so order.

The following Jurors were then sworn. SOLOMON NELSON, (foreman), Ephraim Annibal, John Ayer, 3d, Joseph Bartlett, Nathaniel Brown, Samuel Foster, Charles Foster, Joshua Howard, John Morrill, William Micklefield, Ichabod B. Sargeant, and Asa Todd.

The indictment against JOHN FRANCIS KNAPP, was then read to the Jury, and the trial proceeded.

The *Attorney General* had commenced opening the cause, when the Court adjourned.

AFTERNOON. The *Attorney General* concluded his opening of the case. The facts which the Government intended to prove—the points it meant to establish, and the law upon which it relied were fully stated.

Plans and surveys of the premises where the murder was committed, had been prepared for the use of the Court; the Jury did not visit Capt. White's house, as moved by the prisoner's counsel, it being ruled that it was unnecessary and inexpedient.

Witnesses on the part of the Government then called.

*J. P. Saunders*, surveyor, swears to the truth and accuracy of the plans of Mr. White's house, and neighbourhood, exhibited to the Court and Jury.

*Benjamin White*. Was servant to the deceased—entered Mr. White's chamber on the morning of the 7th of April—found him in his bed, dead—called some of the neighbours—gave an alarm—stated particulars of the situation of the house, &c.

(See annexed plan of the premises.)

*Miss Lydia Kimball*. Was a domestic in Mr. White's family—corroborates Benjamin White's testimony.

(Here it was ruled by the Court, that no witness should be present in the Court House, during the examination of another.)

*Dr. Johnson*. Was called on the morning that the murder was discovered—stated the situation in which he found the body—found ten wounds—examined the body about 36 hours afterwards and discovered three more wounds.

(The *Attorney General* here said, that having proved the murder, he should endeavour to prove that there was a combination formed to commit the murder—called Joseph Jenkins Knapp, jr.

*Joseph Jenkins Knapp, jr.* was placed on the stand.

*Attorney General*. Are you willing to testify?

Witness did not answer audibly, but shook his head in refusal.

*Attorney General*. What reason do you give?

*Dexter*, counsel for the prisoner objected to the question, and appealed to the Court.

*The Court*. The witness was not bound to assign a reason—he might testify if he chose.

*Attorney General*. The witness should be informed that the pledge made to him by the Government was redeemed, unless he made full confession. You still refuse to testify, do you?

Witness nodded assent.

*Attorney General*. The peril remain on your own head.

(The witness made no answer. He was not heard to speak while in Court. His council declared that his refusal to testify was his own act and was not of their advising or counselling.—Witness was remanded to prison.)

*Attorney General*. The Government will prove the conspiracy by other witnesses. In a case like this, the act of one is the act of the whole.

*Benj. Leighton*, lived at Wenham, with Mr. Davis—has lived there since the 6th of October. Joseph J. Knapp, jr. and his family came there soon after he lived there—heard a conversation between Joseph J. Knapp, jr. and Francis Knapp about a week before Captain White was murdered—he went down the avenue and sat down—sat there a few minutes—heard men talking—saw F. and J. J. Knapp, jr.—they came close to the gate—he sat behind the wall, near the gate. J. J. asked, 'When did you see Dick?' F. answered, 'this morning.' J. J. then asked, 'When is he going to kill the old man?' F. said, 'I don't know,' and J. J. replied, 'If he dont kill him soon I wont pay him.'

Then they turned back—it was about 3 o'clock—had been to dinner—he thought it was on a Friday—the next Friday before—certainly within a week. They were not aware of his being within hearing—was waiting for Mr. Davis to go to work—soon after this he heard of the murder—will be 18 years old the 30th of December—cannot be under any mistake as to the import of the conversation—nor as to the persons. Capt. Knapp lived in the house. F. Knapp came there frequently—did not know Richard Crowninshield—never has seen him to his knowledge—does not remember F. Knapp's coming to the house but once since the murder—it was in the evening after 9 o'clock, and before he came there to live—cannot tell exactly when—believes Mrs. Beckford was living there at the time—came in a chaise, a gentleman with him—a slim man, about as stout as Francis Knapp—F. got out and went into the house—he went to the door with Joseph Beckford—Capt. Knapp was at home—he asked for him, and Joseph Beckford told him he was at home—when F. K. was going in, Capt. K. met him at the inner door—they went in and shut the door—nobody else in the room—they staid together about an hour—the other person did not get out—sat in the chaise all the time F. K. was in the house—they went off together—could not tell which way they took, for the house stands at the end of a lane—they staid about an hour—did not give their horse any food or water.

*Cross examined.* The house is about fifty rods from the road. It was by the gate that he heard the conversation. Mr. Davis was in the house at that time. The two Knapps were standing at the gate by the house, when he left them—sat down to take a *nooning* as usual before he went to work, and to wait for Mr. Davis—he had just done dinner—they had dined—they stopped at the gate by the house, and he passed by them—they saw which way he went—instead of going on to work he sat down. Mr. Davis staid in the house and afterwards came along—did not tell Mr. Davis what he heard—has been called upon to testify by Mr. Waters and another—they sent for him to Mr. Waters' office in Salem—told them he could not recollect himself—was carried to Mr. Waters' office twice—left the Knapps standing in front of the house—did not go into the room. The avenue was in another direction towards the pasture—the gate where the Knapps stood is in the fence which parts the avenue from the field—it is about forty feet from the house to the gate, and about fifty rods to the place where he got over the wall by the gate in the avenue; the place where he got over could not be seen from the gate where the Knapps stood—has tried—because he was afraid, if they saw him, they would kill him—if they had known that he was there and heard the conversation, he was afraid they would kill him—thought they must have known that he sat down there—if they saw him get over the wall, they might think he heard the conversation—if they could have seen him at the wall they could have seen whether he sat down or went on. He first saw Mr. Waters a week ago last Thursday, believes it was that day—was carried to Mr. Waters' office—did not say that he knew nothing about it, as he remembers—did not say he had never told Mr. Sterrat that he knew—said he could not have his recollection about him—told them he did not know any thing about Francis Knapp, and that he did not know, that Richard Crowninshield had been up there—they told him that Mr. Sterrat said he had told him something about the matter—he replied,



that he did not recollect it—could not then remember, that he had told Sterrat any thing about it—he did not remember any thing then, for he was taken suddenly and frightened—told Mr. Waters to come the next day and he would tell all he could recollect—did then remember, but told them he had not his recollection about him—said so because he did not calculate to tell any thing about it—they told him that Doctor Kilham and Mr. Sterrat were in the shop, and knew what he said, and that he must recollect—was in the office an hour or more—they told him he would be brought to court, but did not say any thing would be done with him—he said what he did to Mr. Sterrat before he thought, and checked himself, without telling what he knew—saw Mr. Waters at Mr. Lummus' tavern last Saturday—they wanted him to tell what he knew; and he did tell them immediately, all he knew—they did not tell him they had a warrant for him. He was going to pick rocks, when he heard the men talking, and looked round to see who they were—did not look over the wall but round the end, between the wall and the gate post—the wall is about four feet high—they were half way from the house when he heard the talking, but could not tell what they said—they came down within three or four feet of the wall, then he heard what he had stated, and that was all that he could hear to understand—never told it to any body till after the murder of Mr. White—did not know what it was about till after that—did not think it very strange, till after the murder.

*Examined again by Mr. Webster.* Mr. Sterrat keeps a shop in the neighbourhood—he went in there, and Dr. Kilham was present, and when Sterrat asked him about the murder, he replied, they think I don't know any thing about it, but I guess I know more than they think for—then he checked himself, because he was afraid if he told of them, and they got clear, they would kill him. Francis Knapp after the murder used to play round him with a dirk and prick him with it—first told the conversation to Thomas Hart, a boy, when they were at work together—afterwards told Mr. Davis that he heard something but did not say what—told it next to Mr. Waters—nobody had attempted to frighten him that he knows of—was taken away suddenly by a sheriff, who read him a regular summons—never saw F. Knapp have a dirk before the murder, or any thing but a sword cane—is afraid now, that if they get clear they will kill him—had told Sterrat before he knew there was a reward offered—did not know how much was offered, but heard there was a reward.

It being near night, the Court adjourned till the next morning.

#### WEDNESDAY MORNING, AUG. 4.

*Rev. Mr. Colman*, has had no particular personal acquaintance with the prisoner, not having known him even by sight till the 28th of May last—had occasionally visited a prisoner in an adjoining cell, and was at that time called to visit Francis Knapp—went into the cell with his brother Phippen, who said, Joseph has determined to make confession, and we want your consent—he was not able to give the reply in the precise words, but the import was, that the prisoner thought it hard that Joseph should have the benefit of making the confession, since the thing was done for his benefit, or advantage.—F. said, 'I told Jo, when he proposed it, that it was a silly business and would only get us into difficulty.'—Phippen, as I understood, to reconcile Frank to Joseph's making

a confession, told him that if Jo. were convicted, there would be no chance for him, (i. e. for Jo.) but if ~~he~~ were convicted there would be some chance for procuring a pardon.—Phippen then appealed to me and asked me if I did not think so—I told him I did not know, and was unwilling to hold out any improper encouragement.

(Here the counsel for the prisoner interposed and said, that they could not consent to have any confession, made by the prisoner, introduced; and after considerable argument and consultation by the Court it was decided that the confessions of Knapp, if he made any, after the hope above expressed, were made under such inducement as would render them inadmissible. The witness was not allowed to state whether Frank consented to Joseph's confessions, or admissions of his own knowledge.)

Mr. Colman however, testified afterwards, that no promise or encouragement, or threats were made to the prisoner, except such as was in the words above related. Knapp asked him if he would use his influence to procure a pardon. He replied, that he could promise nothing, but said he thought that his youth, &c. would be in his favor—no intimation of favor if he would confess facts within his own knowledge, was made in his hearing. He found a club after the interview with the prisoner, (and produced it,) he found it under the steps of the Howard street meeting house, (of which a plan was shewn,) on the 29th of May, about 1 o'clock. Dr. Barstow and Wm. Fettyplace went with him at his request—found it under the steps nearest the burying ground, They are of wood. There is a rat-hole large enough to admit his hand—on the first trial he did not reach it, but thrusting his hand an inch or two further, he brought it out.

When he was asked who directed him to look there for it, the council for the prisoner objected if it was a part of his confession, the whole of which was excluded by the order of the Court. The Court finally overruled the objection, and on being asked again, he answered, "the prisoner at the bar—he gave precise directions—went at once, and found it, as above stated."

*John C. Palmer*, called. Gardiner objected to have this prisoner testify on oath, because he did not believe in a future state. He was then sworn to answer such questions as might be asked, and said, he believed in a Divine Providence, and in a future state of rewards and punishments. He was then sworn and testified :

Knows the prisoner—was intimate with George and Richard Crowninshield—has been in company with them and F. Knapp, at the Crowninshield's house at Danvers, twice. The first time on the afternoon of the 2d of April last, about 2 o'clock. Frank came out with a young man named Allen, on two white horses—saw him in company with George C.—Allen was in company with Richard—they walked away—didn't see them in the house—was in a chamber of the house himself—saw them from the window—George and F. Knapp walked away together—did not see them again; till after 4 o'clock—came between 1 and 2—after 4 he saw them all four—Allen and Knapp got on horseback, and rode off—don't know where—the two Crowninshields came immediately into the chamber where he was—there was something said at that time about the proposed murder—both George and Richard spoke of it. George in the presence of Richard proposed to him to be concerned in the murder of Capt. Joseph White—can't say what

the object of the murder. was without referring to the statement of what F. Knapp had said. (He had been directed not to state what the Crowninshield's told him Knapp had said, except when Knapp was present.) They offered him one third of the money George C. would receive, which was \$1000 to be paid by J. J. Knapp, jr. George said it would be easy to meet him that night and overset his carriage—no, it was Richard said so. George said he had gone out to his farm. Joseph's object was to have a will destroyed. George gave him reasons for engaging in it, and said he was poor, had no funds, and that would be a good opportunity for him to obtain money—no other time than that was mentioned for committing the murder—nothing was mentioned about entering the house—they said the house-keeper would be absent from home at the time he would be murdered. Francis came again that day between 7 and 8 in the evening—came alone in a chaise—thinks he staid over a half an hour—went in company with Richard in the same chaise—said he was going to the mineral spring—didn't see Frank Knapp afterwards,—never has seen him from that time till now. Richard came home between 11 and 12—don't know how he came—left Danvers the next afternoon, Saturday. The will was to be destroyed at the time of the murder. Joseph Knapp was to get it—he could have the keys of the trunk from Mrs. Beckford the house-keeper—he was to get the will, and at the same time the man was to be murdered—said the will gave the estate to Mr. Stephen White, who lived at the Tremont House, Boston—left the place on the next day after this interview. Saw the Crowninshields next on the 9th of April—went to their house somewhere between 11 and 12 at night—went under the window and spoke to George—he opened the chamber window and asked who it was—I told him, and asked him to come down—he asked if any one was with me, I said no, and he came—he then asked if I had heard the news, I said, yes—left there the next night and went to Lynnfield and put up, and went the next afternoon to Providence, staid in P. two days. On the 27th had another interview with the two Crowninshields at their house—staid there till the 29th—had four 5 franc pieces on the 29th from Richard—asked him for it, and promised to return it—went to Lowell, from there to Boston and afterwards to Roxbury and to Belfast, by water, the master's name, he believes was John Boyles.—wrote from Belfast to Joseph J. Knapp.

The Court here adjourned to half past two.

#### IN THE AFTERNOON.

*Palmer's examination continued.* A letter was shewn to him, which he said was the one he wrote.

Before reading this letter to the Jury, the prisoner's counsel objected and the Court ordered, that two letters written by J. J. Knapp, jr. in consequence of receiving this, should be introduced first; in consequence of which

*William H. Allen* was called. Two letters were handed to him—has seen them before—put them into the Salem Post office, on Sunday afternoon, between 5 and 6 o'clock, the 16th of May, at the request of Joseph J. Knapp, Jr.—he gave them to the witness for that purpose, and said that his father and Nat. (Phippen,) came up to see him yesterday, at Wenham, and brought with them an anonymous letter, from a fellow somewhere down East, containing, as he thinks he said, a devilish

lot of trash—the fellow wrote, I know all your plans and your brother's, and will expose you, if you don't send me money—they had a good laugh at it, and requested his father to give it to the Committee of Vigilance—they had made fun of it—what I want of you, is, to put these letters into the Post office, and nip this silly affair in the bud. I think these are the words he used—he said several other things—but witness could not recollect them—said his mother Beckford was getting old, and spoke in a frivolous manner.

The letters were read by Webster—one was addressed to Hon. Stephen White, Salem, Mass. and run as follows—Lynn, May 30th, Mr. White will send the \$5,000 before tomorrow night, or suffer the painful consequences. N. CLAXTONPORT. The other was addressed to Dr. Gideon Barstow, Salem, and begun in this manner:—May 30th, 1830, Gentlemen of the Committee of Vigilance. Gentlemen, Having heard that you have taken up four young men on suspicion of having committed the murder of Capt. White, I think proper to inform you that the Hon. Stephen White, came to me one night and offered to give me \$5,000 if I would do it. The letter then detailed a plan according to which it was to be done and also the circumstances of the murder, pretty much as they were supposed to have taken place, accusing Mr. Stephen White of participation, and was signed "GRANT." The letter to Joseph J. Knapp, was addressed without the designation of Junior and fell into the hands of the father; it threatened Joseph the son with exposure if he did not send money to a certain town, and was also signed, "GRANT."

*Palmer called again and cross examined.* Frank and Allen came to Danvers as before stated—they hitched their horses to a tree near the house—saw no one else there at the time—he went from there to Lynn and Lynnfield—expected to meet John Dearborn—staid at the half way house from 6 or 7 in the evening till 9 in the morning—believes Dearborn belongs to Chester N. H.—agreed to meet them with him—wished to see him there—did not write to him—calculated to go to N. Y. with him to go to work—the kind of work would have been agreed upon if he had met him—could not tell what kind of business they would do—it would have been settled when they met—had been for the first time in Salem nearly 3 years before the murder—went to Crowninshields—was acquainted with them—went to see them—had an invitation from George in New York—left Salem a little time after—did not come again till last March or February—cant tell every place he was at during that interval—was in N. Y.—was at home, at Belfast—has been to sea—has no particular occupation—lived in Thomastown two years—declined telling what he did there.

Webster objected to this examination, but the court thought it was proper, and told the witness that if he could not answer any question without criminating himself he might say so, and be silent.

On being asked again what was his employment while at Thomastown he replied—cutting stone—did it for the State—dont know that he can tell who employed him for the State—because he dont know—became acquainted with Dearborn there—he also worked in the employment of the State—came to Salem last February—lived at the Coffee House a fortnight—was a part of the time at Danvers—went by the name of Carr, a part of his name—he prefered it at that time—was in no business—lived at the Crowninshields—with George and

Richard—they kept one room in the house to themselves—he lived in that—had no intercourse with the rest of the family—it was immaterial to him, whether it was known that he was there or not—has seen the family out of the house, but not in the room—dont know whether they knew he was there or not—came from jail to day to testify—has been there since last June—did not come from Belfast of his own accord—has not been able to find out on what process he was kept in Jail—has been in close confinement—has seen half a dozen persons—has seen Mr. Coleman, Mr. White, Mr. Waters—dont know that he has seen Mr. Waters—has seen his father—saw him first 8 or 10 days ago—did not get an answer to the letter to Knapp—was taken at Prospect, Maine, at the Post Office and taken to Belfast by Mr. Jones—examined and committed to Belfast Jail—was not chained at that time, was there more than a week—Mr. Jones took him out of Jail and brought him up by land—was in chains during his journey—was put into a cell on the first floor, had two windows—two small slits in the wall instead of windows.

Webster objected to the course of the examination.

Dexter expected to show that the witness had been used harshly—

Webster thought that would induce him to testify against the Government.

Dexter said, a little kindness after severity will work wonders.

The court ordered the examination to be continued.

Was in jail nearly a month—visited by those he had named—first stated what he knew concerning the murder at Providence—afterwards at Belfast—at Salem to the Committee of Vigilance—made it in writing of his own will and sent it to them—was not compelled—has not been told he was in danger of being sent to the State Prison—was not told that he was in danger of prosecution—read in one of the prints about stealing some flannels in Danvers—(declined answering a question concerning them)—dont know that he declines because it would criminate himself—has not heard any one speak of the flannels—has not had any promises of any sort—was offered the protection of the State from this crime, if he testified—had declined it—supposed he should be discharged because they had no claims to hold him—has not said he preferred remaining in jail—did not want council—has refused it—did not like to tell by what name he passed at the half way house. [Mr Dexter submitted to the court—the court said he would be obliged to tell unless he thought it would criminate himself.] He then said, "George Crown-inshield"—did not call himself by that name when he went, but as he was coming away—owed the Landlord, who asked his name—told him he would call and pay him in a few days—dont know that he gave or offered a note in payment—dont know whether he did or not—cant tell, if he did cant recollect it, [he was told that if he could not answer without criminating himself he should say so—] said he had answered the only way that he could—he didn't know—left a silk handkerchief in pledge—belonged to himself—never in trade in Boston—dont recollect what time his father came to see him—came to the door of the cell—was told by the jailer not to talk concerning the trial—his father said he understood he was committed for trial—and was then told by the jailer, &c.—knew of the reward offered—knew it on the 9th of April—dont know that he took any means to receive it—was not actuated by that motive—dont remember that he has consulted with any one as to ob-

taining the reward—dont recollect that he has asked any one for it—his object in writing the letter was to know whether J. J. Knapp jr had any hand in committing the murder—he would have made it known—that was his motive, because he thought it ought not to be concealed—knew of the Committee of Vigilance—did not state to them because he was not then prepared—wanted to advise with a friend to tell him how he should proceed—not with reference to obtaining the reward—not alone to bring it out, perhaps he expected a part of the reward—dont know that he should have refused it, probably it would not have been his duty if he deserved it—should leave the public to say whether he deserved it or not—did not expect it—because he understood that others were before him—advised with his father before writing to Knapp—his father gave him no advice, probably had not made up his mind before he wrote—did not tell what he heard before the murder, because he did not believe the scheme to be true—thought they were joking—did not believe they were serious till after he heard of the murder.

By Webster. Has not complained of ill treatment—no one that he wanted to see has been refused—has refused any pledge from the Government of indemnification or protection.

By Dexter. Had his food in the chamber, it was brought by the Crowninshields—gave him nothing but the handkerchief which he had of George C.—gave him no money at that time.

*Mr. Allen.* He said F. Knapp went to Danvers on the 2d of April, and stopped at Dustin's Hotel—had two white horses—a visit to the Crowninshields was proposed by Frank, went and fastened their horses to a tree—went into the house with Richard—George came in, in a few minutes, took a piece of cloth from the side board and carried it off—soon came back—asked Richard to show him through the Factory and went accordingly—parted from Frank and George—does not know which came from the house first—after going through one Factory went to that back of the house—Frank and George came in and all came to the house together—returned home with Frank on horseback—went once before with Frank to see the Crowninshields, dont remember at whose expense—saw Richard and Frank together about 3 weeks after the murder, by the Franklin building in Bath Street, Salem—F. was walking with the witness, the band playing at that time—Frank crossed the street to speak with Richard, had two or three minutes private conversation with him, rejoined witness and went on.

*Cross examined.* Cannot tell how long they were in the Factory—should think from half to three quarters of an hour—saw nobody but the workmen—came away about 5 or 6 o'clock.

By Webster. Frank usually wore a dark frock coat—and glazed cap—like frock coats in general—coat had a velvet collar—sometimes he wore a camblet cloak.

By Dexter. Glazed cap and cloaks now commonly worn by young fellows in general—he had a glazed cap himself—Pierce wore a plaid cloak.

*Mr. Osborne*—keeps a livery stable—F. Knapp has hired horses of him frequently—has charges against him since the first of April—(several charges were mentioned and referred to in the books)—on the 2d of April, Knapp had a saddle horse to go to Dustin's in Danvers—Allen had one the same afternoon—Frank had a horse and gig the evening of the same day—knows it was after he had the saddle horse—Frank

often went to his books and altered charges—was allowed to do so—the charge was made originally to Lynn Mineral Springs, but had been altered to 'ride'—'Springs' is erased, and 'ride' inserted—he did not do it—thinks it is in the writing of Frank. 5th, saddle horse to Wenham—6th, horse and gig to ——— did not know where nor was any price put down—left it for Knapp to fill up or inform about—19th, horse and gig to Wenham—21st, horse and gig to Wenham—over the name of Frank, is put that of Joseph J. Knapp—F. said it was to be charged to his brother—23d, horse and gig to Wenham—the last charge in the day—has eleven entries—supposes it to be in the evening—25th, half of a horse and gig, he went in company with Mr. Balch—27th, horse and gig to Wenham.

*Cross Examined.* Makes his charges when the horses go out as a general practice, and puts down the place if they tell beforehand—always considered F. K. honorable, and allowed him to make any alterations in charges to him—willing to trust to him—there were a considerable number of charges in March against him—always hired frequently—don't know as more so in April than before—understood that Knapp's father fail'd on the 6th of April—the charge on the 5th, he should think was in the afternoon—has a horse called nip-cat—a remarkable horse, very small, sorrel, a smart trotter, gaunt, a lively horse—generally goes with her mouth open, as though she was going to devour all before her—would be likely to be noticed.

*Thomas Hart*—is a hired man with Mrs. Beckford, at Wenham—was hired by Capt. Joseph J. Knapp jr.—went to live there about the 15th of April last—Frank K. came there to live some time after the murder, about the 28th—saw F. Knapp on a Saturday night about the 28th of April—a dark night—is confident it was Saturday. Capt. Jos. Knapp jr. and Mr. Davis had been to Salem—came about 7 in the evening—can't say who was with him—did'nt see any body—he came in a chaise—knocked at the door—Joseph Beckford opened the door—he asked for Capt. Joseph Knapp, and they both went out and stood at the chaise, about a quarter of an hour—could see the chaise, and thought he heard their voices—they came into the house, went into a room by themselves, staid about ten minutes, and then came out and Frank went away—Benjamin Leighton and Mr. Davis were there—it was dull, cloudy, rainy weather—Frank had on a camblet wrapper or great coat and a cap—Jos. Beckford went to the door—they went through the kitchen, by him—saw no light at the door—Capt. Jos. Knapp gave him three 5 franc pieces to buy some meal with—had been dark three quarters of an hour when Frank came. Frank Knapp has worn a dagger—has seen him use it; has seen him a great many times take it out and play round B. Leighton. One evening in particular, he came in while they were in bed and pricked Ben. through the clothes. Ben. said, 'don't prick too hard Frank, you hurt me;' 'oh!' said he 'lay still you wont feel it but two or three minutes.'

*Ezra Lummis*—keeps a tavern in Wenham—knows Richard Crowninshield—came to his house about ten days or a fortnight after the murder, in company with a young man who he did not know—the young man wore dark clothes and a glazed cap—thinks it was Saturday—was not at home when they came first—offered a 5 franc piece to pay for their bill—his wife brought it to him, while he was eating his supper—made the change himself and gave it to Richard Crowninshield as he

thinks—had been away—it was between 9 and 10 when he came home—they did not stay long after—has since seen Frank Knapp—sure the man there that night was stouter—knew the 5 franc piece, has seen them and taken them before.

*Mrs. Lummis*—recollects the occurrence of the 5 franc piece ; it was about the 24th of the month ; thinks about the latter part of the week ; misty evening ; cool ; wood brought in to make a fire ; thinks it was before Mrs. Beckford went to live at Wenham, and before a certain robbery that was talked of.

*Josiah Dewing*, returned from Point Petre, Guadeloupe, in the month of April ; brought from 3 to 4000 5 franc pieces ; 500 for Jos. Knapp, and the rest for the owners. Was master and owner himself ; Knapp's portion was paid to him, the rest was deposited in the bank, and remained there now, as he understood from the cashier ; saw them put into a wheelbarrow to go to the bank.

*Daniel Marston*—knows George Crowninshield ; received a \$3 bill and 5 5 franc pieces from him the Saturday night before his arrest ; received such pieces often, but not so frequently as other currency.

*George Smith*—tends a grocery ; received a 5 franc piece of a man in company with George Felton, about 9 o'clock the Saturday evening before his arrest ; did not know the man, but was told it was George Crowninshield.

*George Felton*—saw George C. pay for something, to Geo. Smith, on the Saturday evening before his arrest ; went with C. into the store ; could not say, whether it was a 5 franc piece or a dollar.

*Joseph Shatswell*, corroborated Capt. Dewing concerning the 5 franc pieces, and said he received them frequently ; perhaps one in every three silver dollars ; had them come home frequently as an importation for his returns in trade.

*Stephen C. Phillips*, was one of the Committee of Vigilance ; Frank and Joseph Knapp came before the Committee at their request, on account of the reported robbery, said to have been committed on them at Wenham.  
(Here the Court adjourned.)

#### THURSDAY MORNING, AUG. 5.

*Stephen C. Phillips* called again. Knows Frank and Joseph Knapp, has known Joseph long—they came before the committee, at a suggestion that it would be agreeable to the committee, and made a statement (similar to that published in *Essex Register*, of which we have a copy\*) after having made the statement as given by the witness, and assented to the minutes made by the committee, they were advised to take care of themselves, to which they said, they were prepared to give them cold lead if they attacked them (the Knapps) again.

The descriptions of the persons corresponded with the description of persons heard of in Brown st. and suspected ; but the Knapps did not know what description the committee had received, nor that any persons were suspected by the committee—it was a matter of common rumor—the statement was given mostly by Joseph, but Frank was present, and assented to it, under some statements and corrections.

*Mr. Palfray*, is Editor of the *Essex Register* ; published an account of the supposed robbery ; applied to the Knapps for it ; Joseph commenced relating ; Frank occasionally joined ; (it was the account given in the note) did not show it to the Knapps ; did not then doubt the truth of the statement.

\* See note A.



**Nehemiah Brown.** Richard Crowninshield was a prisoner under his custody. On the 15th of June, had occasion to go to his cell, and found him hanging to the grate by two silk handkerchiefs, and dead ; called a number of physicians, who attempted to restore life, without effect ; then summoned a coroner, who held an inquest. Mr. Colman visited the Knapps ; thinks he visited Joseph first ; cannot be certain. Richard's counsel had constant access to him ; came frequently ; he had newspapers to read at different times.

**Mr. Palfray again.** Made a publication concerning the finding of flannels stolen in Danvers three or four days before the death of Richard C. ; did not name Richard ; (this was objected to by counsel for the government, because the paper was not produced.)

**John Burnham.** Saw George C. about 8 o'clock on the evening of the 6th, in Essex st. going down along, eastward ; two persons with him ; thought one looked like Chase ; did not know the other.

**Jonathan McGlue.** Knows George and Richard C. ; saw Richard the night before the murder, Monday night, standing in the street near Capt. White's house ; stood on the edge stone with his face turned up ; stood a little above the window where Capt. White was murdered ; tipped him on the shoulder and said, ' How are you ? ' then walked up the street together ; parted at the Post Office ; Richard went on ; it was half past 8 o'clock.

**Benjamin S. Newhall.** Knows George C. ; saw him the evening of the murder, the 6th of April, Tuesday ; saw him in Williams' street, passing down, a little before ten in the evening ; a man with him ; don't know who. Had on a glazed cap ; was shorter than George, who was the nearest to witness ; knows it was between half past 9 and 10.

**Thos. W. Taylor.** Knows George Crowninshield ; about 15 or 20 minutes past 9 on the night of the murder, saw him south of his door in Newbury st. ; leads from Essex to Brown street ; some one with him ; didn't know who ; some one said ' Hallo, George, where are you going ? ' he answered, ' You know, all the way down town ; ' did not see where he went ; the expression is a common one.

**Joseph Antony.** Knows George C. by sight ; saw him on the night of the 6th of April, going from Essex st. to Central st. just before 9 ; two with him, knew one, it was Chase ; did not know the other ; had on short jacket and fur cap ; knew Richard ; saw the two C's with Chase at Lynn Mineral Springs about a year ago, playing props and cards ; saw Richard have a dirk ; R. told him ' It was his nurse child.' Took it out and looked at it. He said it was an article he commonly carried. It was 5 or 6 inches long ; handle of bone or ivory ; saw Richard afterwards, a few days after the murder, at C's house ; went there to see if he could learn any thing from the C's. about the murder of Capt. White ; from curiosity ; both came together and inquired about Portland, and the best way to go there ; asked if game was to be had there ; showed a set of false props, they had made ; agreed to meet at the Salem Hotel, on the next Tuesday or Thursday ; went on Thursday, saw them there then ; appeared himself to have been an object of suspicion to many people assembled, and retired ; the C's and two or three others were whispering in a corner ; he told Stephen White he would go ; don't remember which suggested

the propriety of going ; his object was to see what they would say ; Richard appeared to be dull ; afterwards had a letter, he being in Boston, from his wife, who was in Salem, saying that he was suspected of the murder ; wrote to the committee that he was ready to answer if they desired ; received of Stephen White a check of \$50 which he borrowed and returned ; got the money from the bank after bank hours ; this was two or three months before the murder ; knew that a reward was offered ; but had no promise of any portion, nor any expectation of any reward or remuneration..

*Stephen Myrick.* Knows Frank Knapp—lives last house in Brown Street—before you go into Newbury Street, on the north side—about 15 minutes before 9 saw a person standing at the post, at the corner, directly opposite his shop, on the evening of the 6th of April, with his arms on the post, facing the common—did not know the man—noticed him because he thought it singular that a man should be there apparently watching for some one—the bell rung 9—he closed his shop windows, but kept a part of the door open—he stood there some time ; walking now and then a few steps one way or the other, and back to the post—if any one was coming either way he walked the contrary way and turned so as to meet the person at the corner ; went and shut his back gate ; saw the person standing there then ; he went away and left him standing there and saw him no more ; did not see the face ; had not known F. Knapp before ; has seen him since his arrest ; thinks the person he saw was Francis Knapp ; but cannot swear positively ; saw him when he was brought up from jail before the grand jury, the first time ; cannot say that he thought Knapp was the person from his own observation alone, but from what he had heard also ; was about the size and height ; Knapp wore a different dress ; the person was dressed in a dark frock coat, very full in the bottom, does not recollect what he had on his head ; the person who he supposed to be F. Knapp at the Court House, was pointed out to him by some one else.

*Mr. Webster.* Lives in Bridge Street ; went down Brown Street from half past 9 to 10 on the evening of the 6th of April, from thence down Howard Street and home ; got a quarter of the way, overtook two persons about the bottom of Howard Street ; first saw them about the middle of the Street ; took one of them to be Francis Knapp ; the two were walking arm in arm ; did not think much about it at the time ; has always known F. Knapp ; usually has seen him every day, when he was at home from sea ; then took the person to be Knapp ; has since altered his mind ; he walked faster ; turned to the right ; they turned the same way ; but don't know where they went.

*Cross examined.* Did not see the faces of the men ; knows F. Knapp well ; sometimes speaks and sometimes does not ; both had on dark wrappers and glazed caps ; dark, misty night ; did not know the other ; thought they were waiting for somebody ; knows it was that night ; cannot swear positively to a man without seeing his face, or speaking to him ; supposed it to be Frank from his air and general appearance.

*John A. Southwick.* Lives next door but one above the Rope Walk, to the west, left his father's house in Essex Street, on the Evening of the murder about half past 10 to go to his own—passed up by the Rope Walk and saw a man setting there—stopped in front of Downing's door and saw a man setting who dropt his head as he went by—went up again and passed by him—returned again—is satisfied that it was the

same person—seemed to be doing nothing—dropt his head every time he passed—had on a camblet coat—glazed cap—took him to be Frank Knapp—had known him before—brought up along side of him from his boyhood—went into the house—wife up—told her who it was—(Court adjourned.)

THURSDAY AFTERNOON.

*Mr. Southwick called again.*—The person he saw was in his mind all the Evening—walked out as far as the corner of Downing's house—was looking for the person down Howard Street—Capt. Bray came up—he (Capt. B.) asked what are you looking for so late? answered, that he had seen a person setting on the Rope Walk—Steps, or thereabouts, who look'd suspicious; Capt. B. then observed he had seen one also, and pointed up to Mrs. Shepherd's and said, there he is now; looked that way and saw a person standing there; that person came down the St. and passed them whilst they were talking, and leaned over a post in front of Mr. Bray's house, on the opposite side, nearly in front of Downing's House, next to the post near Downing's house. They went into the back part of Bray's house, up the back stairs; into the front chamber; when they went into the chamber, one half of the window shutter was open; Bray looked down; he kept back; Bray observed, he is still standing at the post, another one has come up; and they have gone to the western corner of the house; he then saw one of the persons running across the street and turned round the Rope Walk corner down Howard Street; immediately went out of the chamber; went down Howard Street; did not see any body after that; parted from Mr. Bray about his house; returned to his wife; talked about what he had seen; a person whom he supposed was Frank Knapp, without commenting upon it.

*Cross examined.* About half past 10; sure that was the time he left his father's house; walked home in two or three minutes; thinks he looked at his watch; thought it was time to be walking up; is willing to swear that it was about half past 10; was within 2 or 3 feet of the man; has not been accustomed to speak to Frank Knapp more than a quarter of the time; his manners have evaded speaking; he wore a camblet cloak; cap; did not see his face; swears he had a camblet cloak; was sitting down; could see that he was cross legged; cloudy and full moon; did not rain then; misty at times; a damp evening; light enough to see the house from Southwick's corner; did not see the man on the steps get up; did not see him move, only dropping his head; his dropping his head made him suspicious; could not tell what to suspect; had a glazed cap; it was his opinion at the time and has always been his opinion it was a glazed cap; swears positively he did not see any fur about it; took his coat off; was told in the house that he had better go out again and look; went without his coat; has not known Howard Street as a place where young men were accustomed to go to meet women; could not say what his suspicions were; met Capt. Bray about Downing's house; cant say what his suspicions were; told Bray he had seen a man, &c. he, (Bray) had seen one too; he pointed out the man standing at the post and said there he is; the other man passed down the street whilst they were in the street; about Downing's house; passed down on the opposite side of the way; cannot describe his dress; had seen nobody else in the street; had then the same suspicions about the person, that walked down, that he had about the person leaning against

the post; took him to be Frank Knapp, from nothing but his dress; took his impression from general appearances; went into Bray's House; Bray looked out of the window; post within 7 feet of Bray's door; 6 or 8 feet to the East of the window; saw two men; cannot describe their dresses; has an impression that one was dressed in a light coat; has not told any person that he did not suppose it was Frank Knapp; has not distinguished the two persons; compared him to Pierce on account of size; does not recollect that he told Bray he supposed it to be Knapp; never told him he looked like Pierce; looked out of a window; saw one of the men running down the street; did not know his dress; supposed the man on the steps was one of the two, or concerned with them; knows it was Frank Knapp sitting on the steps; supposes he was the person that went down to the post; Bray was looking out of the window 5 to 8 minutes; it is a common dress; glazed caps are not so common; dont know that there are many young men who wear glazed caps, and camblet coats; cant say when he was first examined by Committee of Vigilance; was questioned at Mr. White's House; never was examined; has been asked questions; has been questioned; (Dexter said to be questioned by any authority he considered to be examined) cant say when first; cant tell how soon after the murder; does not remember that he was examined before the Knapps were arrested; looked out of the front window; saw one run towards the Eastward; did not say he turned the corner; did not know; saw them separate, one going to the East, the other to the West; never said that he thought it was either Selman or Chase; presumes he was sworn before the Grand Jury; might have said there, about the size of Selman; did not intimate it was Selman; dont remember that he ever said it was Knapp; went to Downing's corner, the first time about half past 10; it might have been 20 minutes before he saw Bray; was in Bray's house, from 6 to 8 minutes; went quick at first; looked over the burying ground; dont know that he gave any reasons for his suspicions; went afterwards rather quicker than usual; talked; supposes about the men; dont recollect; did not hear the clock strike 11; it was 10 minutes after 11 when he went into his house; has not said he heard the clock strike 11 that night.

*Mr. Bray called;* lives near the corner of Brown St; met Mr. Southwick on the evening of the 6th of April, as witness was going down Brown St. from westward; as he past the 4th house at the 4th post, he saw a man; dark frock coat, very full at the bottom; cant say whether it was buttoned; on the north side of the Street; witness was on the south side; continued until he met another man looking down Howard Street, or as we call it, *peeping* down; before he got very near, found it was Mr. Southwick; asked him what he was out so late for; Southwick answered, he had seen a man on the Rope Walks Steps that looked suspicious; witness turned around and observed, 'there stands the man now'—could see him distinctly then; so light he could see him perfectly well; Southwick said he had seen a man before he went into his house, where he put off his coat, and came out to see if he could find him; went close to the Rope Walks to get out of the wind; the man who stood at the post, passed by them, and stood near a post just by witness's door; did not go out of Brown Street; asked Mr. Southwick to go into his house; and see what they were about; went in at the gate; sliding shutters in the parlour below; closed; did not wish to

make a noise ; went up into the chamber ; saw the man standing at the post ; did not lose sight of him until they went away ; was in the chamber about 10 or 15 minutes ; a man came up ; when they first saw him he was 150 or 200 feet from the post ; came up directly ; no bowing ; remained 2 or 3 minutes ; went round to the corner of the house 10 or 15 feet from it into the street ; not so plain in sight as the man at the first window ; could see by pressing hard against the glass ; stood close to the post facing each other ; second position one and a half feet apart ; remained not more than 1 minute ; the man that came up from the East, had on light clothes ; the man that came up ran as hard as he could run down Howard Street ; the other man went out of sight ; passed to the Eastward ; came down as quick as he could ; the man was out of sight ; saw nothing ; knows he did not go to the westward ; went down Branch St, (*Howard Street*) came to the burying ground ; looked over ; saw nobody then ; walked the whole length of the Street ; saw a carriage or light waggon pass by, going to the Eastward on the new road towards Beverly ; about a common pace ; fane not wide ; could not tell certainly what kind of a carriage was passing ; continued to Williams Street ; came up Williams Street and home ; did not know the person of the prisoner ; knew him when a boy ; saw him in the prison and at the house ; cant tell whether he is the person whom they saw ; the same size ; heard the clock strike 10 ; 30 to 40 minutes after when he saw Mr. Southwick ; knows the locality ; did not take much notice until after the murder ; can see the windows of the west end of Mr. White's house ; all are visible from Mr. Downing's steps and thereabouts ; went there whilst Mr. White lay dead ; could see lights in the house ; in the western side ; could see all the windows ; could see light in the windows over Mr. White's chamber ; could see the windows on the same floor and the windows over that ; does not remember about the lower floor.

*Cross examined.* The only view the witness had was from the steps of Downing's House ; cannot see from Rope Walk, or the post, near his house ; on walking down from Shepherd's saw him before he came up with Southwick ; thought it strange ; Southwick did not state who the person was ; has stated since that he thought it was Frank Knapp ; could not say whether it was before the arrest of the Knapps ; could not say that he (*Southwick*) had said it was Mr. Peirce ; attended an examination before Mr. Savage ; had heard it said Mr. Southwick had said it was Mr. Peirce ; did not know that he had heard from his lips ; witness had on brown frock coat, dark pantaloons and hat ; Southwick had on light redish pantaloons, blue coat, and hat.

*Mrs. Southwick.* Recollects her husband was out on the night of the murder ; came in about 10 ; cannot say how much after 10 ; went out again ; cannot say whether it was just before or after 11 ; it was near ; had looked at the time piece just before.

*Miss Potter.* Lives in Brown Street ; the evening of the murder, about half past 10, saw a man standing at the corner of Howard Street ; turned and looked at our house down the Street ; the door was open and he turned and looked into the house ; house is nearly opposite Rope Walk ; was in the house ; his dress was light pantaloons ; cinnamon drab ; dark coat ; dont recollect what he wore on his head ; knows Mr. Southwick ; dont know whether he was the man.

*Mr. Frothingham.* Was in Brown Street on the evening of the 6th

of April; left Mr. Potter's house about half past 10; house nearly opposite the Rope Walk; saw a person walking up at a slow pace, who turned and looked into the door; was within a few paces of the corner of the Rope Walk; he was standing, when he (witness) passed by, on the side walk; stopped within a few paces of the western corner of the Rope Walk he walked up as far as Capt. White's house, when he noticed him standing there; and he thought with another person; the first had on light Pantaloon, dark coat and hat; did not see any one in the Street; must have come up Howard Street, or Brown Street below; second person had on dark dress; thought at first it was Mr. Southwick, but came to a different conclusion before he reached home on account of his intimacy with Mr. Southwick and the person not speaking to him; his pantaloon were cinnamon brown; he was taller than Mr. Southwick.

*Joseph Burns.* Born in old Spain—has lived in Salem 25 years—keeps horses to let in St. Peter's street—south of the end of Brown st.—knows Frank Knapp—had a conversation with him in the stable after the committee was appointed, (Dexter wanted to know if the witness was a Catholic, if he had been sworn in such a manner as he considered binding,) oh yes—I've been in this Court before—F. came over after the Wenham robbery—asked if any body was in the stable besides witness—I said, no sir—he asked if I had a loft up stairs—told him yes—he said it was the best way to go up, I want to say something in particular to you—both went up—asked if witness had heard any thing about Capt. White's murder—told him no, wished to the Lord I should because I would make it known pretty quick—Frank said the committee had heard he (witness) was out till about 10 o'clock that night—and if you see any body don't you let them know any think about it, because the committee will try to pump something out of you—F. said Joseph was a friend of mine, and set a good deal by me, and he (F.) too—Frank said, the committee would try to pump you and see if they could catch you in one thing or another—he said he knew all the members of the committee and if they wanted to see him he was ready to tell all he knew—he asked Frank, what he thought of the two Crowninshields who were in jail—F. said they are as innocent as you and I are—he asked who the murderer could be—F. said Capt. Stephen White must be the one—I said, darn it, don't you go to tell me any such thing—don't you tell me about Capt. White, I know him too well, I have known him ever since he was 18 years old—Frank put his hand under his waistcoat, where he had a dirk—I said damn your dirk, I don't care for you and your dirk and 20 more—Frank said he came as a friend, that I might be on my guard, and not get into trouble—knows Joseph J. Knapp, jr.—has been in the habit of going to his place and changing his outside dress, was there the week before the murder, sometimes wore a cap—sometimes a hat—sometimes a cloak—sometimes a surtout—sometimes took one and left the other.

*Capt. Nathaniel Kinsman.* Lives in Brown street—knows about the places there—a few days after the murder went over to Brown street to see from what part of the street he could see the windows of Capt. Knapp's chamber—could see them from the south-east corner of Downing's house—could see the northern window and those of the chamber above—did not observe the lower range—nothing to interfere with the range of the 2d story—could see then 18 or 20 paces farther west and up, and in the intermediate space—two lanes with gates leading from Essex to Brown st.

*Phillip Chase.* Went to look at the windows—could not see them from the rope-walk steps, could see them from the opening of the street a little to the west—went at the time merely from curiosity—on the steps of Downing's house could see very plain—could see the range above—did not pay particular attention to any but the windows of Capt. White's chamber—had not then heard of any arrest—did not suspect any one—did not suspect the Knapps till they told of the robbery.

*Mary J. Weller.* Acquainted with George Crowninshield—at her house, one morning went into the room where he had slept with Mary—found a dirk—found it under the pillow—George and Mary slept in the bed—he usually slept with her—nobody else slept there—don't know which pillow he slept on ; Mary and she both showed it—George told her, that he carried it because it had saved his life once, and some Salem fellows were going to flog some Danvers fellows. The night of the murder he came between 10 and 11—she went to the door with Mary, both let him in—the clock struck 11 soon after—about 10 or 15 minutes—he went in with Mary and slept with her as she supposes—on the next morning witness went out for water and met James Stearns, who told her of the murder—she went to the door and knocked—George got up and opened it—she went in and told George and Mary—he seemed to be alarmed—Mary was alarmed—wanted to go that day, and see the body—asked Mary to go, but she said George was not willing she should go—there was a reason for it—George desired witness not to say any thing about the dirk, or about his staying there—said if there was a scrape in Salem it was always laid to the Crowninshields—he staid there the next day—said he had the headache—talked about the murder as the rest did—did not come that night at his usual hour—was accustomed to come about dark, and to go away and return again about 12, or from that to 4—once before staid all day—staid and listed the door—this time laid a bed almost all day—said he had the headache—went away about dark. (In reply to a question from Mr. Dexter what kind of a day, the day following was, she said) you know as well as I do—what do you ask such a silly question for?—that has nothing to do with this trial and I wont tell you—I did not come here to be bothered by lawyers. (On a sug-

gestion from the Court, the prisoner's counsel desisted from a cross-examination.) The dirk was about as large as a common case knife, and had a bone or horn handle.

*Mr. S. C. Phillips.* Five franc pieces are frequently imported—has never seen one in circulation that he can recollect—has received them as imported and deposited in the bank or with brokers—are received and rated as merchandize—go by tale—is a merchant—wholesale dealer—not in the habit of selling goods here, at least in a small way ;—usually receives his money in bank notes or checks.

*Mrs. Catharine Kimball.* Was about the house of Capt. White about half past 9 day after the murder—found a key on the sofa, under the copperplate covering—did not try it into any door—Mrs. Stanly with her—common sized key—don't know what became of it, whether she put it down or gave it to any body.

*Benjamin White called again.* Saw Capt. J. J. Knapp, jr. Sunday night before the murder ; was the last time he saw him at Capt. White's house ; he took tea ; Capt. White took tea at Mrs. Stone's in Chesnut st. that evening. Knapp's wife came there in the afternoon ; Knapp came towards night ; both drank tea there and went home. A plank was resting against the window—it came from before the garden gate ; a man could step on to the end of the plank from the door step ; yard gate not usually fastened ; generally shut ; had been called up and questioned by the committee on suspicion.

*Mr. H. R. Dealand.* Was in the house after the body was laid out ; saw a key ; it was lying on the sofa, when the cover had been removed ; said there's the key ; had been inquiring for it ; took it up and put it into the door ; it fitted ; called the day before and inquired for Capt. White ; Lydia Kimball came to the door ; don't think she knew him ; did not know there was a party the next night at Mr. Dealand's house next door to Capt. White's.

*Dr. Gideon Barstow.* Went with Mr. Colman to meeting-house ; Mr. Colman took out a bludgeon and said, " This killed Capt. White." The proportion of five franc pieces is small—never recollects to have received but one—they are articles of merchandize.

*Mr. Jedediah Lathrop.* Lives on Capt. White's farm ; saw him there last on the day he was murdered ; the young man that lived with him, came with him ; they went away about 5 o'clock ; Capt. White came there the Friday preceding ; no one with him ; came in his little wagon ; usual hour of dining about 1 o'clock ; he started after dinner to come out and returned before sunset ; usual route through Danvers.

*Jonathan Varry.* Lives with Mr. Osborne ; is hostler ; knew Frank Knapp ; had hired horses and chaises in April as usual. Knapp asked him to fetch a horse and chaise behind or near



the Court House, as soon as he could ; don't remember any reason ; tackled horse and chaise and brought him behind the Court House ; Knapp got in ; gave him the reins ; between 1 and 2 o'clock ; knew the day on account of bringing grain ; it was the last day of drawing grain ; Knapp had usually taken his horse and chaise at the stable ; wanted the NIP-CAT as soon as he could have him.

*Mr. Osborne.* Bought the grain the 2d of April ; the last load brought on Tuesday ; knows that was the day.—(*Court Adjourned.*)

#### FRIDAY MORNING—

*Mr. Hacker.* The entry of the sale of the oats was made before they were taken ; the last were taken on the 6th of April ; according to a book kept by his boy, Osborne commenced taking on the 2d ; cannot say that they removed any grain on that day, but has no question of it ; knows they began to remove on that day.

*John W. Treadwell.* Is Cashier of the Mercantile Bank ; has been in the habit of observing 5 f. pieces ; they are a coin that does not circulate freely ; not a tender ; are received in trade as a remittance ; are a favorite bank coin, because they are apt to stay in the vaults ; are sold. Mrs. Beckford is a niece of Capt. White ; was his housekeeper ; sister's daughter ; Mrs. B. had two daughters, one married Joseph J. Knapp, Jr., the other married Mr. Davis ; had other nephews and nieces ; they were Henry White's children. Stephen White lived at Boston, at the Tremont House.—*Cross-examined* ; is one of Committee of Vigilance ; the committee was appointed at a public meeting ; had been constantly occupied since ; have not employed the members of the bar in Salem generally ; some had been employed ; the committee have conversed with members of the bar, as well as with other citizens ; the members were sworn to secrecy ; have employed agents ; don't know how the expenses of those general agents are defrayed ; it was stated at the public meeting that Stephen White would pay any one who should make extraordinary exertions, even if no one should be convicted.

[Here Mr. Dexter said that it would be necessary to show some circumstances connected with Stephen White, but the counsel for the prisoner disclaimed entirely all intention to cast an imputation upon his character ; they respected him highly.]

Mr. Webster said the whole character, conduct and motives of Mr. Stephen White were open, and they were ready to meet any charges which could be brought against them.

Gardiner, we do not threaten.

Webster ; then I defy.

Webster called for all the names and all the facts and doings of the Committee of Vigilance ; told the witness to state them.

After hand bills were published (don't know who paid for them) a public meeting was held ; Stephen Phillips was chairman ; a committee of nomination was appointed ; they nominated to the meeting and others were added.

[Putnam, Judge, observed that this mode of examination would occupy too much time.]

Webster said, that if any of the doings of the committee were to be made known, he wanted the whole ; if the council for the prisoner drew forth certain facts, he wanted other facts to explain them. [The witness went on with unimportant statements.]

The committee applied to Mr. Choate professionally, in regard to the letter from Belfast ; not to any other lawyer ; never heard of any private subscription ; money, \$1,000, was put at the disposal of the committee by Stephen White ; don't know that the members of the committee are generally related to Stephen White.

Osborne, again, commenced moving the grain on the day when the contract was made ; finished on Tuesday ; don't know when prisoner returned on that day ; don't know the day when his father failed.

Varry. Don't know what time Frank came back ; he had Nipcat.

Palmer again. Went on the 9th to Crowninshield's house, called up George ; G. asked if any one was with him ; said no ; asked if he had heard of the murder ; G. said they had no hand in it ; went up into the room ; was asked by Dick if he had heard the music down in Salem ; and said that the people supposed they had some hand in it, and they must leave here ; he replied that would be a bad plan, because if they were innocent they would be arrested ; was told by George that he had taken the dirk down to the machine shop and melted it down to the handle ; did it because a committee was appointed, to search in people's houses for such things, and it would be a bad sign ; Dick and he agreed to meet at Lowell the first of May ; wanted to get money first ; gave him a five dollar bill, don't recollect any thing else.

Cross-examined. Has not stated that the murder was committed with a hatchet, nor that he thought so ; he found a hatchet, and hid it away ; named one of two places where he threw it ; did not state this to a magistrate ; did not make any statements to a magistrate at Belfast ; he told Jones and Jones told the magistrate ; he sat still and said nothing ; he did not know but it had been used ; put it away that he might know where to find it ; the handle had been nearly sawed off ; there was clay on the head of it ; it looked as if it had been hammered down in clay ; is confident it was on the 9th of April.

Starret. Lives at Wenham, about a quarter of a mile from the residence of Mrs. Beckford ; has heard of the reported robbery ; has heard of nothing done to detect the robbers ; knows

of nothing done ; saw the two Knapps at his store the afternoon before the evening of the supposed robbery.

*Abraham True.* Lives in Williams Street, knows the places about Howard Street ; most of the west and north part of the house of Capt. White, can be seen from Brown Street ; one row of windows up and down can be seen perfectly ; knows that the windows can be seen when the leaves are off the trees ; cannot be seen from the Rope Walk ; can be seen 6 or 8 feet from it ; dont remember about the lower story.

Mr. Webster stated, that there were no more witnesses to be offered for the prosecution at the opening, except Mr. Colman, and he moved the court to hear argument upon the propriety of introducing his testimony, to the confession of Frank Knapp.

The court expressed their desire to hear argument, and their willingness to review their former decision ; they refused to let the Solicitor General open the argument for the government, because council had been assigned to the prisoner on the expectation that the two counsel who had commenced the management for the government would manage to the close ; if another should be admitted for the government, it would be impossible for the court to restore the balance by assigning another to the prisoner, and they could not expose the case on the part of the prisoner to such tremendous hazard.

Mr. Webster said he was wholly unprepared to argue the question, having relied upon the Solicitor and requested delay, which was refused ; and he commenced the argument.

He stated the condition of the question ; the government had introduced a witness, Mr. Coleman, to show certain confessions or admissions of the prisoner at the bar ; after stating the preliminary conversation, as above reported, he said, there the examination was arrested. The words supposed to import encouragement to the prisoner, were spoken by Phippen Knapp ; ' if Joseph is convicted, there will be no chance for him, but if you are convicted, you may have some chance for procuring a pardon'—and this was said with a view to get Frank's consent that Joseph might confess.

He made several points. The assent to be obtained was not a confession in the eye of the law, nor did it partake of the nature of a confession. It was a thing not his own, he could not give nor withhold it, with any effect upon the result. His assent that Joseph might make the best bargain he could, for himself, did not imply his own guilt, for it did not involve the supposition that he assented, that Joseph's confession would be true, he might be supposed to say, ' I am innocent, I stand upon my integrity, whatever you may say to my prejudice, I can refute by evidence ; do, therefore, as you please.' This consent that Joseph might confess, could not imply his own guilt, and could not be used in evidence against him. Frank's assent or dissent, that Joseph might confess, the government never thought

of asking, for they know it could not be evidence; it was not, in law, a confession. A confession in law, is an acknowledgment of facts, within a man's own knowledge; and because that knowledge is a secret, tending to his own injury, it is his own property; his own right; it is his to give or withhold; and the humane rule of the law says, shall not be extorted from him by torture, or threats, or promises, or encouragement to hope of favor. But his assent or dissent, was not a fact of his own knowledge; it was not a thing wanted by the government. He could not, by assenting or dissenting, prevent or hasten the disclosure; for he was first told that Joseph had determined to confess. It was not, therefore, whether he assented or dissented, a confession which could be improperly obtained.

The assent was not sought by a threat, or promise, or encouragement to hope of favor, either in terms or by implication. Phippen came to *reconcile* Frank to the consequences of Joseph's confession. To state to him the peril of his condition; to assure him of conviction; to take away all hope this side the tribunal, where he might hope for mercy from God; and to throw him upon the slender chance of clemency in the executive breast. This is no threat, no promise, no encouragement. Frank did not consider it such, for he said, "It is hard, or unfair, that Joseph should have the benefit of turning States' evidence, since it was for his advantage that I have been placed in this peril." The words do not hold out threat, or hope, or promise, dependent upon his assenting that Joseph might confess. It was not, if you assent, you will have some hope of pardon; but, the import was, as the matter now stands, you have some hope of pardon, which Joseph has not; let him have this chance to escape conviction and do you make the best of your chance; there is no encouragement in telling a man to prepare to die. There was no inducement whatever offered to the prisoner, but the entire reverse, and whatever confessions or admission he might afterwards have made, cannot be excluded on the ground that they were extorted; nobody extorted any thing; it was the prisoner's brother, in the exercise of fraternal and filial affection, who held this conversation, and it cannot be supposed, that he would hold out inducements to extort evidence for the government, against his brother.

Whatever the inducement was, if there was any, it was applied, not to get the prisoner's own confession, but to get his consent that Joseph might make confessions; and the subject matter, were entirely distinct. The prisoner was in the first place asked to consent that Joseph might confess things disadvantageous to him and after that whatever might have been the inducement to consent, even if it had been bought with money, it could not exclude any voluntary confessions which he himself might choose to make; it was the consent that Joseph might do an act to his injury, that would be brought, and not

his own acts to his own injury; and even in that strong case, the government were entitled to whatever confessions Frank might make. Suppose Frank had been told that Joseph *had made* full confession, and upon that, had confessed, the confession would have been good in evidence; and would have been so, even if the statement had been false; because he gave up his secret knowledge voluntarily, though under a false impression, and the government were entitled to it.

*Gardiner* made a few observations for the defence and was followed by

*Dexter*, who argued, that the assent that Joseph might confess, could be used in evidence, because it would imply, if he assented, that he knew, that Joseph could confess, and it would follow that he knew what he would confess, which might be used as evidence to show that he knew, and probably was concerned in the subject of the confession. If he assented that Joseph might confess, it would, in some measure, criminate himself; that assent, therefore, was a confession, in the meaning of the law, and any confessions following it, would be excluded. That there was inducement used is manifest. He refused to assent, and the words stated by the witness were employed to induce him to assent. Whether he assented or not is unimportant; if any means were used by offering a hope, or promising, the confession could not be received. The inducement evidently used, (and it had its effect,) was, that Joseph, his brother, might be bettered in his chance, and, that he might have a better hope of pardon; that this was so, was proved by the witness, because Frank asked him to use his exertions or influence to obtain a pardon. Besides, it is highly probable, that Joseph's confessions were to be made if he assented, and not otherwise, and then he could save his brother and might hope to place himself on more favorable ground.

*Mr. Webster* closed the argument for the government by recapitulating with slight variations what he had before stated.

*Adjourned.*

#### SATURDAY MORNING.

The Court delivered their opinion, *seriatim*.

Judges *Morton* and *Putnam* were of opinion, that the confessions ought to be excluded; because the assent would be a confession against the prisoner, and might be used in evidence, implying knowledge and conspiracy; and because that assent was obtained by what was intended as an inducement, no matter of what kind or how slight, it was sufficient to render all subsequent confessions incompetent.

Judge *Putnam* thought otherwise. The assent ought not to be admitted as evidence against the prisoner, because the government would have it in their power always to place a prisoner between the horns of a dilemma; if he assented, according to the arguments of the defendants counsel, it would imply that

he knew, and was concerned in the transaction about which the confession was made ; but how much stronger would the presumption be if he refused ? it would then be said, that he knew of what the confession would consist, and was afraid of it, because it must criminate him. He did not think the government ought to have the power thus to endanger the life of a prisoner ; and whether it was assent or dissent, he should feel bound to rule it out. The assent not being a confession to implicate the prisoner, and the influence, if there was any, being offered to obtain that alone, the subsequent confessions must be supposed to be voluntary and not extorted. But he could not see, that any influence was used at all. It seemed to him, that Phippen Knapp went to Frank, to state to him what was the condition in which he was placed by Joseph's determination, and to reconcile him to that circumstance ; and perhaps for the happiness of Joseph, and the family, who would be better pleased by knowing that so important a step met his approbation ; and he could not see in this any evidence sufficient to exclude the confessions which followed.

According to the opinion of the majority of the Court the confessions were declared inadmissible.

Mr. Webster then stated, that the witness, Mr. Colman if they were allowed to ask him, would testify that no consent was given, and that would show that there was no influence exerted, and probably that none was intended.

The Court decided after some consultation that that was a fact important to be known, and might be asked ; Judges Morton and Wilde said, that they had based their opinions on the supposition that assent was given, and if it should be proved that there was no assent, it would entirely change the state of the case.

*Mr. Colman* was then called ; the Court informed the witness of the purpose of the enquiry, and gave the following direction, " if the prisoner refused assent you will say yes, if he assented you will make no answer ;" and then the question was proposed in the following form ; " did the prisoner refuse to assent to the arrangement made, as proposed by Phippen Knapp, that Joseph Knapp should confess ?

*Answer.* There was neither assent nor dissent.

The Court decided that the objection of improper influence was removed and the witness might go on and testify to the whole conversation.

*Mr. Colman* then stated, that he had heard that the murder took place early in the evening, and believing the fact incredible, asked Frank concerning it ; Frank replied, that it took place between ten and eleven o'clock ; had been incredulous as to the fact of one person alone having been in the house, asked the prisoner, and he told him, that Richard Crowninshield was alone in the house ; asked him if he was at home that night ; he said he went home afterwards.

DEXTER asked what was meant by afterwards.

Witness replied, the Court and jury must put their own construction upon the words ; asked him as to the weapon and the place where it was concealed ; he described the place as he had stated before ; asked him what became of the dagger or daggers ; does not recollect which word was used ; he replied, it or they had been worked up at the factory.

*Cross examined.* There was not a great deal of conversation ; Phippen Knapp took the lead ; went to the cell a little before 7, in the evening ; the jailer came and hurried them, saying it was time to elose ; thinks they were with Frank about half an hour ; had never spoken with Frank before that time ; had seen him once since at the grate, but had no conversation with him—went to see Frank from the cell of Joseph Knapp, at the request of Phippen Knapp ; had been in the cell with Joseph holding a conversation with him ; before it was finished, Phippen knocked at the door, and asked to come in ; desired him to wait a few minutes ; he waited ; when the conversation was closed, Phippen came in—went that evening to Boston to get a pledge of pardon—started at 10, arrived in Boston between 12 and 1 o'clock ; had been to Joseph's cell three times that day, early in the morning ; at 3 o'clock, and at half-past 5 ; immediately after the third time went to Joseph's cell ; afterwards to Boston ; Frank was told that Joseph had *decided to make* a confession ; he was informed nothing more in his hearing ; has no knowledge that it was said, that Joseph *had made* a full confession ; does not recollect that he stated that the matters stated to him should remain a secret ; it was not stated that the matter told previously by Joseph should remain a secret, unless he (Frank) consented ; it might have been stated, that they would not be divulged without Joseph's consent : did not state, that there would be no chance for either if Joseph held out ; could not have stated that there was evidence enough to hang him, without Joseph's confessions ; looked upon him with too much pity to make such a remark ; has no recollection that the prisoner said he had no confession to make ; had been told the weapon was under the steps of the Branch meeting-house, but the precise place, and the particular steps, the person could not inform him ; does not remember that Frank was told, that Palmer was pardoned, nor that application for a pardon for him was made to the Attorney General ; it was very fully stated to Joseph and might have been to Frank ; does not recollect hearing it said that a pardon was expected for Palmer by the next mail ; thinks it not improbable ; it was well known to Phippen and himself, that it was expected, and had been told to Joseph ; the jailer had called the second time, when Phippen repeated, " if Joseph is convicted, there will be no chance for him, but if he, (Frank) were convicted, he might have some chance for procuring a pardon." Then Phippen appealed to him and asked,

“Don't you think so?” Witness replied, that he did not know and was unwilling to hold out improper encouragement; Frank then said, “I suppose you would use your influence?” witness said, “I can promise nothing, I wish you well, and feel kindly, your youth may be in your favor.” Witness then said, “Mr. Knapp, this is your deliberate consent, is it?” he replied, “I don't see that it is left for me to choose, I must consent”—and then they left the cell—has stated all the conversation that he recollects which he is willing to aver upon oath—is unwilling to state impressions, which he *might* have gained in conversation previously, with another person, however strong his impressions may be; thinks he said to Stephen White, that Frank had confirmed Joseph's statements; did not mean to say all Joseph's statements; since he learned that he was to be summoned as a witness had stated to the counsel for the government and to the grand jury; does not recollect telling that Frank told him where the club was; did not tell any one as he can remember; went with the gentlemen as before stated, and took it out, from under the step; took it out on Friday; saw it on Tuesday; said he would rely upon the honor of Phippen Knapp not to remove it; this was said in going from the jail; thinks it was immediately after they had left the door of the jail; an individual in the presence of Phippen had said it was under the steps; he asked the prisoner in the presence of Phippen and was answered in his presence; cannot say that Phippen knew where it was, because he can judge of no man's knowledge but his own; said to Phippen that he must ask him upon his honor, not to remove the club; he went into the cell for the gratification of Phippen Knapp, and at his request; had no other object in going; Capt. Joseph White was a parishioner and intimate friend of the witness; Stephen White is a parishioner and intimate friend also; Jos. J. Knapp, jr. was a parishioner, and he married him sometime since, and felt towards his wife, as to a daughter; the prisoner was not a parishioner; at the request of Joseph, after 3 o'clock, witness went to tell Joseph J. Knapp, senior, and Phippen, that Joseph wished them to come with him to the cell; he delivered the message; Frank did not tell the witness that it was told to him, where the club was placed, nor that he knew it of his own knowledge, but answered directly to the question.

Here the counsel for the government rested the opening.

The examination of the witnesses on the part of the government being concluded, *Mr. Gardiner* opened the defence.

The jury should be cautious that no prejudice influenced their decision; they had heard much out-of-door conversation about the murder, before they were empanelled; they had formed opinions, hastily perhaps, but naturally. They were now upon their oaths; they were sworn to forget all that they had formerly heard, and well and truly try the issue, according



to the testimony now before them. A great and powerful interest had been excited; he stood there, as counsel for the prisoner, opposed by the committee of vigilance; opposed by the private prosecutor; opposed by public opinion; opposed by the whole bar of Essex; opposed by the learned officers of government; opposed by the distinguished representative from Massachusetts, *sent to Washington*. There was strong private and public prejudice against the arraigned, from which the jury were sworn to purify themselves, or they would load their own souls with the crime now charged against the prisoner. The testimony which the government had brought before the court, and which the jury had heard, was mere hearsay evidence; it weighed nothing. The prisoner, if he is guilty, must be proved guilty; must be proved so by legal and competent witnesses. If you listen to this testimony, you proceed on mere suspicions; upon conjectural evidence, which ought never to be relied upon when it involves the life of a fellow being, who may be innocent, and who has not been proved guilty by any direct, positive, or creditable testimony. Several persons have been suspected of this murder: Mr. Beckford, Mr. Selman, Mr. Chase; even the private prosecutor had not escaped suspicion; each in his turn, as *circumstantial* evidence had been against him, had been publicly and privately pointed at as principal or accessory. All of them had been examined, and some of them imprisoned, until it was found that no accusation could be sustained by the *conjectural* testimony upon which they had been apprehended. The evidence should be conclusive: beyond all doubt; and going directly to prove the facts, in manner and form as set forth and declared in the indictment upon which the prisoner had been arraigned, and to which he had pleaded "not guilty." When the prisoner said he was not guilty, he did not mean to say that he had *never* been guilty of an evil action, but that he was not guilty of the crimes charged against him in the form and manner set forth in the indictment. Authorities which the learned counsel for the prosecution would not dispute, had declared explicitly, that *circumstantial* evidence was not to be relied on. [Mr. Gardiner here quoted authorities to prove his assertion.] Circumstantial evidence had *hung the innocent*, for the supposed murder of persons who were *afterwards* found alive. He would refer to a few cases to the point. A young girl and her mistress lived alone; the mistress was murdered in her bed; the house was found shut up; the doors locked, and no one in the house with the deceased but the servant-maid; she was tried, condemned, and would have been hung, but for the providential disclosure of the fact, that the house had been entered from a neighboring house, by persons who had placed a plank from the window of one house to that of the other; had entered the house by the plank; killed the girl's mistress; withdrew the plank, and closed the window.

No one was suspected but the poor innocent girl, and her life was saved by an accidental discovery of the real murderers. A man was accused of the murder of his niece; witnesses swore that they had heard, on a certain day, a girl crying, "don't murder me, uncle! don't murder me!" the girl disappeared, and the man adopted another girl, *resembling her*, whom he used to call his niece; the man was tried and condemned. After a short time his own niece re-appeared. He cautioned the jury to be guarded against testimony going to prove the identity of the prisoner. A man robbed his mistress and fled; a short time after, a man, resembling the servant, appeared in the town where the robbery had been committed; he was apprehended; the woman swore that he was the person; all the neighbors who had known the man-servant swore to the identity of the prisoner; he was tried, condemned, and hung; some months after, another person was apprehended for a like crime; was tried and condemned; on his way to the gallows, he confessed that he was the person for whose crime the *other* had suffered. It then appeared, from competent testimony, that their resemblance to each other, was so strong, that even their intimate friends could not distinguish them. Confessions were not good testimony. They might be bought, or there might be a thousand reasons for making them, or, rather, *seeming* to make them. The jury probably remembered, or had heard of, the Boons, who were tried for murder in Vermont; *they confessed* that they were guilty; but before execution, the man who was supposed to have been murdered, was found alive in New-York. As to the testimony before them, none of it went to prove the guilt of participation or the prisoner. Leighton had heard Joe Knapp ask Frank Knapp, when Dick meant "to kill the old man." He answered, "he did not know." This proves that he could not have been interested in the murder, or he certainly would have given a different answer; besides, the conversation probably alluded to something else, and there is no shadow of proof; no evidence; no testimony, that the question and answer related to the murder of Capt. White. The finding of the bludgeon proved nothing against the prisoner; it has not been shown that he either made, borrowed, bought, or used it; or that it was ever seen in his possession. The prisoner had been seen with a dagger; his counsel will endeavor to prove by witnesses, that the dagger was *not made* until *after* the murder. A person had been seen near the premises on the evening of the murder, who resembled the prisoner in *size*; there were more than 300 persons in court of his size; his stature was common, and not remarkable; besides, no one had sworn positively that it was he; no one had seen his face; no one could say, on his oath, that the person, seen that evening, was Frank Knapp, the prisoner at the bar.

MONDAY MORNING, Aug. 9.

*Mr. Saunders.* The plan represents truly the facilities and difficulties of entering the house from Brown street. Has no affidavit of Palmer's in his possession; had one just long enough to know he swore to it; can't say when it was taken; afternoon of the discharge of Selman and Chase; perhaps the next; saw it last in possession of Palmer; Brown, under keeper of the jail, and Mr. Waters, were present in the cell when it was subscribed and sworn; can't say whose hand writing; can't say how long; ended at the bottom of a letter sheet page; don't know where it commenced: left cell before Mr. Waters: Brown was within, or near the door.

*Mr. Bray.* Has not examined since to see if he could see a man coming round the corner. There are several paths across the common: man was 150 or 200 feet from where he stood: (pointed out the spot on the plan:) shew a stranger the point where he first saw the man: two gates or turnstiles each side of the arch: could not see the one upon the right: could see it from the other side: could not have seen him coming round the corner if he kept close to fence: don't think he saw him the moment he might have been in sight: might have been same size as the person at the post.

*Mr. Brown.* Was not present at any examination of Palmer in his cell. Mr. Saunders administered the oath: affidavit left with Palmer.

*Jos. Burns.* Dirk had plated handle silver mounted: had a cross-piece: was not drawn: can't tell how long: will tell what he knows: will not tell what he don't know: when Frank came Stephen White was not in his house: it was day time.

*Mr. Allen.* Has known Frank long: at school: had a dirk: can't tell whether before or after the murder: about the time dirks were selling in Salem: never owned nor wore one himself: some young men wore them after death of Capt. White. The dirk exhibited is the same Frank had. Mr. Newell made it for him or sold it to him: don't know when: never saw Frank with any other: after the murder, but can't tell whether after or before the robbery.

*Mr. Leighton.* The dirk had gilt handle: the one exhibited looks like it.

*Mr. Newell.* Made the dirk: was making it when Frank came in: Frank said he should like to buy it: agreed to sell it: sold it to him day before the attack at Wenham: made it himself: did not make it at Knapp's request: had little to do and began to make it for amusement: Knapp was pleased with it, and wanted to have it finished: is not his business: is a jeweller: there was a demand for dirks: can't say further why he made it: it was finished several days after Frank first came in.

*Mr. Pearce.* Dress at the time of the murder was like Knapp's usual dress: plaid cloak and black glazed cap: dress

was common : does not think it was customary to wear dirks before the murder : some sword canes : wore plaid cloak all winter : very different from camblet : dark green, shaded : was not on any steps, nor leaning on any post in Brown street that night : lives in Brown street.

*Mr. Wiggin.* Is a tailor : camblet cloaks most worn and common : made 24 from 1st Sept. to 1st April : made as many last year as in the previous three or four years : did not make a plaid last winter : mandarins are common : made as many as cloaks : something like wrappers : snugger : differed from cloaks.

*Mr. Ward.* Is a tailor : made about fifty cloaks last winter : two thirds imitation camblet, one third silk or German camblet, one or two Scotch plaids : made a cloak for the prisoner : made him a frock coat between the 20th and last day of January : single breast : snug about the body : quite full about the skirts : color olive, inclining to brown : has made such for other persons : not so many mandarins as formerly : frock fashionable.

*Mr. Osborne.* Is a hatter : sells from 16 to 1700 a year, and more than 500 caps : sold a cap like the one exhibited to the prisoner : not many of that kind worn : sold of that kind one to three dozen : other hatters sell them : sells to any one who comes into the shop.

*Mr. Saunders.* The affidavit, signed by Palmer, and shown him, is the one that he certified : certified to no other.

Mr. Gardiner read a certified copy from the records of the state of Maine. In 1827, Palmer, in company with one Preble, broke into a house in Belmont, Waldo county, state of Maine : was sentenced, and imprisoned in Thomaston jail two years.

*Mr. Babb.* Is inn-keeper and farmer : lives at the half-way house on Salem turnpike : knows Palmer : has not seen him before now since he left half-way house : not positive when he left there : according to his impressions came on the evening of the 9th April : left, morning of the 10th : heard of the murder on the 9th : a man gave him the news : Palmer never slept at the house before, that he knows : Palmer could not settle his bill, had no money : called himself George Crowninshield : gave witness a plaid silk handkerchief and a due-bill for 62 1-2 cents, signed Geo. Crowninshield : kept his head down : witness left the paper on the desk, and has never seen it since : saw Palmer go towards Lynn : knows it was about the 9th or 10th, as he was settling, at the time, with one Green, whose receipt is dated April 10th : don't know where Palmer came from : came in between 7 and 8 in the evening, and left next morning about 7 o'clock : didn't make much account of the due-bill : don't know who took it : was in a hurry to go to work. Palmer got up late : remembers many little things about it, which, if he could swear to, he could tell a pretty straight story.

*Mr. J. P. Vose.* Is clerk and commissary at the State Prison in Maine ; knows Palmer ; that is the man.

*Mr. J. W. Webster.* Lives at Belfast, Maine ; has known Palmer 8 years ; has no reputation ; his stories not to be believed ; knows nothing favorable ; always represented as very bad ; hundreds will not believe him in a case where he is interested.

*Mr. John H. Angier.* Lives at Belfast ; lawyer ; has known Palmer 8 or 9 years ; *never heard his general character for veracity called in question* ; would not take his oath ; public opinion is against him ; in fact he has no character with us.

*Mr. Alfred Wells.* Importer of Hardware and fancy goods, Boston ; sells arms ; has sold a good many small arms lately ; more than in the same time before since the War ; has had orders from Salem ; sold many to Mr. Johnson ; a good many within two months ; draw was emptied once or twice during the month of May and June ; has sent samples to Salem ; the *short* dirks were retained ; the *long* ones returned.

*Major Petty.* Lives at Danvers within quarter mile of the Crowninshields' house ; just before or after the murder, he was at work with George Crowninshield, at his request, trimming some trees ; Richard Crowninshield and two young men came towards where George was ; did not know the young men ; heard one called Allen ; cannot say whether the prisoner was him ; about his size ; one had a whip ; did not know whether they came in a chaise or on horseback ; the young men went towards the house and George went with them ; looked after them and saw the front door open ; two of them were upon the steps ; can't say if they went in ; gone two or three minutes ; walked back within two or three rods of where he stood ; could hear them talk but did not listen ; talked as young men usually talk ; thinks that as they went to the house, George and one of the others went a little, perhaps a rod, ahead of the other two ; took no particular notice ; all came back together ; staid 10 to 15 minutes ; they started to go towards the factory ; it was after dinner.

*Mr. Allen.* Saw a man at work, but can't say it was Mr. Petty.

*Major Petty.* Was mending a fence when George called him to trim the trees ; it was in April ; was digging holes for two posts ; found no frost ; it was not in March ; think fore part of April ; never saw the young men before ; thinks he heard George call one of the young men Allen.

*Mr. Skillaber.* Was not present at Mr. Southwick's examination before Justice Savage ; has conversed with Mr. Southwick since the arrest of the Knapps ; asked him questions about the persons seen in Brown-street ; asked him which was the taller of the two ; asked him whether he thought they might be Richard Crowninshield and F. Knapp ; he said he did not know, for ought he knew it might be them ; had no conversation about

the man on rope-walk steps ; asked only one or two things ; his object was to satisfy himself that it might be Richard Crowninshield ; he asked these questions as counsel for Richard and George Crowninshield.

*Mrs. Burns.* Did not see George Crowninshield on the night of the murder ; did see Selman and Chase ; about 8 o'clock at her house in the yard near her husband's stable ; came in chaise, tied horse and went away ; husband not at home ; Mr. Chase returned about half past 9 ; stopt in the house about five minutes waiting for Mr. Selman who did not come, and he went away in the chaise ; Mr. Selman returned about five minutes after Mr. Chase went away ; a young man was with him ; did not know him ; stood at a distance ; should not have known it to be George Crowninshield, at that distance ; Selman did not stop ; said he would call again ; said he expected Mr. Chase to return ; left no message ; came back in quarter of an hour to see if Chase had called for him ; he had not ; young man told him to tell me to tell Chase that if he called at the other side of the bridge at Pendegrass' he would find them there. The house and stable are at the same place in St. Peters-street ; Pendegrass' is over the South bridge in South Fields ; did not know the voice ; never said it could not have been George ; she did not recognise the voice ; spoke moderately ; can't tell length of the yard ; never measured it ; can measure if the counsel choose.

*Mr. Kneeland.* Saw George Crowninshield on the night of the murder in South Fields about 7 o'clock ; other side of the bridge at a place called the news room ; is in the same building with Pendegrass' store ; is a Reading Room ; Richard Crowninshield advanced the money for the rent ; can't say who came with him ; George came in just after Chase had introduced Col. Selman ; stopt half to three quarters of an hour ; all three went away together ; saw them second time between 9 and 10 ; Mr. Chase came first alone in a chaise ; then George and Selman came after on foot ; after 9 he thinks ; George Crowninshield remained some time ; other persons came in ; talked some time ; went off ; Selman and Chase in company ; George remained ; witness left the room one or two minutes and returned ; was asked which way he was going ; answered, nearest way ; George said I am going to Mary's and will go along ; nearest way Maloons Mills ; stopped at the head of High street at his gate ; bid George good night ; about 11 o'clock ; struck after he went to bed ; mother keeps a light burning ; always goes into her chamber and gets it ; has done so thirteen years ; did not converse with his mother about the matter.

*Cross examined.* Is called a Reading room ; they take Alabama and Mobile papers, for the use of the room ; R. Crowninshield paid for the papers ; they take the Truth Teller from New York ; considered a good paper ; equal to the Enquirer ; room

sometime used as a place of diversion ; All Fours is sometimes played ; for a dollar or half a dollar ; have no blue beans ; if they had a few blue beans would play a little Lu ; it is not witnesses' Reading room ; employed to make fires ; sweep the room, keep the key, &c. ; Richard Crowninshield paid him ; no particular sum ; satisfied him for his trouble ; gave him a little change sometimes ; Dick paid \$12 a quarter ; hired it of David Foley for one quarter ; rent would have been up 11th of May ; when first suspected gave up the room ; would not have his premises ransacked ; can't say whether before or after the murder ; began to remove 8th April ; took away a looking-glass and some small things ; nothing on the 9th ; none of his friends came after he gave up the room. (Witness was asked if they ever played props ; he appealed to the Court whether he was bound to answer ? Yes, answer the question.) Well then, I have seen props hove ; no other games played there ; was not a gambling house ; a gambling house was a cheating house ; did not bet high ; two or three cents ; sometimes fourpence ; had liquor in the room ; sometimes liquored.

*Mr. Neupört.* Is a victualler at the corner of Union and Derby street—saw George on the night of the murder—George came in with Selman between 8 and 9—staid 10 or 15 minutes—inquired if John McGlue had been there—George inquired—did not say for what they wanted to see him—6 or 8 minutes of nine when they went away.

*Mr. Fairfield.* Keeps the public house at Danvers—saw George Crowninshield on the night of the murder—about 7 o'clock—Chase and Selman in company—stopt 10 or 15 minutes—drank—came in a chaise—went away in the same—two of them drank brandy and one, cherry—went towards Salem.

*Mr. Austin.* Is a tanner and currier—saw George about half past 9 on the night of the murder at Pendegrass'—stopt till half past 10—went up towards Marblehead with John Needham—witness came by south bridge—John Osborne was with witness—the persons at the room were John Osborne, the Crowninshield fellow, John Needham, Jo. Burns and witness—got home about 11—lives in Boston st.—never knew Chase until he was pointed out to him ; he had walked from Pendegrass' to the house in 19 minutes—does not know who usually went to the room—Chase and Selman went away about 5 or 10 minutes before him.

*B. Selman.* Saw George Crowninshield on the night of the murder—came from Marblehead with Chase to see a man—Chase wanted to see George, and witness went with him to the factory—Chase asked him for money—it was between 5 and 6 in the afternoon—George went with us to Salem—left him at the Post office just below the coffee house in Essex street—we went to Burn's shed and left the chaise—came out and met George nearly opposite the Post office—walked a short dis-

tance and went over to Pendegrass' : arrived about a quarter past 7 and staid till 8 : returned to Salem : went down by the Franklin buildings : Mr. Chase met an acquaintance and left George with me : Chase went with his friend, a female, and said he would be at the stable in 15 minutes : went with George to Newport's cellar : staid best part of an hour : George went to see McGlue : returned and met me at corner of Franklin buildings : George went with me to Reed's in William street : I went in and remained half an hour, when I came out George was waiting at the gate : went directly through Brown street to Burns' shed : did not stop in Brown street : went to shed and found the chaise gone : knocked at door : Mrs. Burns came : Chase had been there and gone : did not know where : went into Main street in front of Coffee house to look for Chase : from thence went to corner of Commercial buildings : struck 10 : told George it was late : went to Burns's told Mrs. Burns that if Chase came to tell him where I had gone : George with me all the time : would go with me as far as Pendegrass' where I met Chase : said he had been waiting half an hour : said he agreed to meet me there, and not at Burns's stable : smoked a cigar : got into chaise with Chase and went home : left George there : got home to Marblehead 5 or 10 minutes before 11 :  $4\frac{1}{2}$  miles distant : has been arrested and confined eighty-five days : wore a hat : Chase wore a glazed leather cap.

*Clark Reed.* Lives in Williams street : does not know where George Crowninshield was on the 6th : Selman came to the house about 9 o'clock : asked if I was in bed : came into room and staid 10 to 15 minutes : went with him to the door when some one said 'How do you do, Mr. Reed?' supposed it was Chase, but don't know.

*Mr. Nathaniel Phippen Knapp.* Has not been in Court since the Rule of Court excluding witnesses—has been told what had been testified in Court respecting the club—has been informed that it was by the prisoners directions that Mr. Coleman found it—can't designate his informant—his informant either Mr. Dexter or Mr. Miller—Mr. Dexter said nothing more than he stated. (These were answers to questions asked by Mr. Webster for the government, by consent of Court, previous to the examination of the witness by prisoner's counsel—Mr. Dexter objected to some questions put to witness and demanded to be sworn. *Mr. Dexter, counsel for prisoner sworn.* Met Mr. Phippen Knapp shortly after Mr. Coleman's examination—Phippen asked, has Mr. Coleman said that Frank told him where to look for the club? witness inadvertently answered, Yes—reclected himself and refused to tell Phippen any thing further.

*Mr. Phippen Knapp.* Heard nothing but what Mr. Dexter now states.

*Mr. Needham.* Is the mother of John Needham—son came



home at 15 minutes before 11—looked at her watch before going to bed and afterwards heard the clock strike—does not know who was with him—did not hear any conversation—heard her son speak to some one at the gate—did not hear what was said—saw her son in her chamber—came in to light his candle—asked him who it was.

*Mr. N. Phippen Knapp.* Was present at a conversation between prisoner and Mr. Coleman : went to prison with Mr. Coleman : went into brother Joseph's cell : went to Frank's cell, and as he was going in observed Mr. Coleman, he looked anxious to go in : asked him to go in : Mr. C. went in : had a conversation with him before they went in—Mr. C. said, Mr. Knapp I do not wish you to disturb the club, I will get a witness and go and get the club for his security : entered the cell : said to his brother—Frank, Mr. Coleman says he has been assured by the committee that they have ample evidence, sufficient to convict brother and yourself, and that your only chance of salvation is for one of you to confess. Palmer has applied for a pardon on condition of being a witness : a promise of pardon has been despatched to him by the officers of government : a messenger would pass through town that evening in mail stage : if they did not confess before the mail passed through it would be too late : if they would confess, the committee would stop the message, and apply for a pardon in favor of whichever would confess. I told him also, that the sub-committee had severally assured my father that Palmer knew every circumstance relating to the transaction, and that the only chance to save his sons was to confess : I then asked Mr. Coleman, if what I had related as coming from him was not true : he answered, Yes ; and then went on to state, I have seen your brother, and made him these assurances and offered him a pardon in case he confesses : I (Mr. C.) also assured him that if he confessed any thing to me, it should never be revealed unless he chose to become a witness : I am authorized by the committee to offer this pardon to either of you. I (witness) then said, Mr. Coleman thinks *Joseph* had better confess, for if *you* should be convicted, *you* would have a better chance of pardon than the reverse : Mr. Coleman thought so too, his youth would be in his favor : his case would excite great sympathy, especially if it should appear, that he was persuaded to do what he had done by his elder brother, but he did not insist upon the preference : I leave that to be settled between you : George hesitated and said nothing. Mr. C. then said, you know the conditions : if you are both tried you will both be inevitably condemned : if either of you chooses to confess, he will save himself : if Joseph confesses and you are convicted, you will have a good chance of pardon : if Joseph should be convicted on your confession, his chance will not be so great : at all events your chance would be much greater, than if you are con-

victed on Palmer's testimony : Mr. C. then hurried him : he had but a few minutes to choose : Frank then said, I have nothing to confess : it is a hard case, if it is as you say, Joseph may confess, I shall stand a trial. Witness recollected nothing more.

*Cross-examined.* Nothing said respecting the club. Mr. C. requested him not to remove the club before they went into the cell, 28th May, Friday evening, about 7 o'clock : Mr. C. said he had been to Joseph's cell two or three times that day : nothing said respecting the time the murder was committed : it was before Mr. A.'s third visit, that he told witness he had learnt something from Joseph. Mr. C. made the visits at the request of the committee, and against the wishes of the family. When we came out of the cell, Mr. C. said he was going to see committee : met him afterwards : said he was going to Boston to see Att'y. General : 8 o'clock, evening, same day, at witness' office ; next saw him Saturday forenoon, about 10, on the road to Boston, this side half-way house : started for Boston about 8 : Mr. C. was alone in a chaise : we stopt ; he asked me to leave mine and get into his. Henry Field was with me. I got into his chaise. Mr. C. had seen the Attorney, and had got a promise of pardon, or rather promise of *nol. pros.* : was not a promise to either one in particular, but to all except Richard Crowninshield, Jr. : asked me to return with him to Salem : was going to see Joseph : witness could not go back then : requested Mr. C. not to go near his brother without him, or until he had seen him. Mr. C. said he would not : would wait until I returned : is not sure whether Mr. C. got the story of the club from Frank or Joseph : believes from Jo : told him he did not get it from Frank, for he said nothing about it. Mr. C. said he believed that Mr. Stephen White had misunderstood him, and asked me to take a note to him to correct the impression. Mr. White was at Boston, at the senate chamber : Mr. C. wrote a short note with pencil : took it and rode to Boston : went to senate chamber : could not find Mr. White : was hurried, and did not see him : when he returned he gave the note to Mr. Coleman : arrived at Salem about 8 o'clock : went to Jo's cell and demanded admission of Mr. C. who was in the cell : he refused, and said I could not come in. Mr. Brown stood at the door : allowed me to ask him a question : could not admit me. Mr. C. said I could not come in ; he had not finished his business : would meet me at office as soon as he had finished his business : came to office about 5 o'clock : brought a paper : asked him to shew me what he had in the paper : could not except in presence of witnesses : would go and get witnesses and then read it to me : or go and see committee, and read it to me before them : would be at Mr. Barstow's, and when ready would send for me ; Mr. Barstow's young son came to office for me : went immediately down : found Mr. Coleman, Mr. Barstow, Mr. Merrill, and Mr. Saltonstall : they could not show the paper to me : committee thought it improper : talked with Mr. Barstow and Mr. Saltonstall : nothing more said to Mr. Coleman : met Mr. C. on Monday morning following in his chaise : was walking with Field : Mr. C. stopt his horse : beckoned to me : I went to him : he said, make yourself easy upon the subject of the conversation upon Salem road, I have seen Mr. White, and there is no misunderstanding. The next time I saw Mr. C. was on the afternoon of the day when Mr. Dexter came down to see me, three or four weeks after : after the death

of Richard Crowninshield : Mr. Dexter was not present when Mr. C. came : Mr. C. said, I have called Mr. Knapp to refresh my memory, I may be called upon as a witness and wish to state the conversation accurately : after some preliminary observations, he alluded to the club : you may remember that your brother Frank spoke of the club : I contradicted him : Frank did not mention the club : the conversation was stopt by Mr. Dexter's opening the door : Mr. Dexter endeavored to reason with him : Mr. C. said he had been contradicted : would go to Joseph Knapp, and ask *him* if *he* ever said any thing about the club : Mr. Dexter said, you appear to be excited, let me go with you : went, and took witnesses ; left the office with Mr. Dexter : heard something in Boston about confession : father failed 7th April : assignment prepared on 6th : witness sat up all night to draw out the papers : brother Frank rode less after the failure : witness had cautioned him against it : had ridden much : came home from sea 23d January : the cap exhibited, is like one Frank wore, in every particular : knows the dirk perfectly : never saw him with any other : was up all night preparing assignment : was at Mr. Waters' from 10 to 1 : went home at 1 : saw his father : left his office at half past 9 with his father : went to Waters' : staid there till nearly 10 : went with Mr. Waters to his office in Washington street : father went home a few minutes before he left Mr. Waters' house : at office a few minutes : struck a light, and got a book : started from office to go to Mr. Waters' house : stopt at father's and got an umbrella : rained until he got to house : when he came out, had ceased to rain : remained at Mr. Waters' house until 10 : got nothing from father's but a key, in order to get in when he returned : went home and found father in the entry : had just got in himself : told father he should set up until he had finished the writing : father went to bed : did not see prisoner that night : saw him at breakfast time : asked father about state of the family : Frank usually went to bed at 10 : the most regular person in the family about the hour of coming home : father's house is in Essex street : past Mr. Washburn on the way : saw a light in Capt. White's chamber about a quarter past 10 : heard it strike 10 before he got to Mr. Waters' : went from Joseph's cell to prisoner's cell : Mr. Coleman and witness went together, to make the statements to Joseph that the committee had made to Mr. Coleman : to treat of the confession, Friday, between 6 and 7 P. M. : had not been to either brother's cell before : both went into brother Joseph's cell : conversation about confessing : does not recollect that Joseph agreed to become States' witness : cannot recollect any thing he said : was not positively agreed, but on conditions, that he should have the preference : his having the preference depended upon Frank : if Frank did not choose [Mr. Webster.—What then?] cannot draw any inference : understood that his turning States' evidence, depended upon Frank's consent : went to Joseph's cell with Mr. Coleman, at his own instance : Mr. Coleman did not ask him to go : he asked Mr. Coleman to let him go : can't remember where he met Mr. C. when he went with him to the prison : when he left Jo's cell, proposed to go into Frank's cell : thinks Mr. Coleman intended to go out of the prison : Mr. C. went to Frank's cell at witness' invitation ; went to Frank's cell to see if he had any objection to stand trial, and let Joseph accept the promise of Mr. C. : it was, as he thinks, agreed in Jo's cell, that he should go, with this promise, to Frank. When and where were

you to meet Mr. C. and report Frank's answer? No where. If Frank assented I do not know that I was to do any thing; went to see what he had to say about it: knew that Mr. C. was going to committee or to Attorney, to report Jo's consent: witness insisted that he did not recollect where he was to go to report Frank's answer; does not recollect that Mr. Coleman proposed to go to Boston before he left Jo's cell—2 or 3 minutes after leaving Joseph's cell before they went into Frank's—talked about the club—was in Jo's cell all the time Mr. C. was there—heard all the conversation between Mr. C. and J.—was in Joseph's cell probably 10 or 15 minutes—it was then that Jo. agreed to become State's witness on the conditions stated—don't know that he *heard* it agreed—understood there was something like an agreement, dependent upon Frank's subsequent assent. If Frank did not assent it was to be offered to him, that is, the promise—Joseph would not accept the promise unless Frank consented—understood so—don't recollect how Mr. Coleman was to know that Frank consented—was in front of the door of Joseph's cell when Mr. Coleman asked him to say nothing about the club; heard nothing said about the dagger in Frank's cell—or melting it up—did not hear Frank say that it was a hard case that Joseph should have the preference when the business was done for his benefit—he said it was a hard case—witness understood, hard to choose—will not *swear*—nothing to his recollection was said about melting up the daggers—will not swear—no secret conversation between Mr. C. and F.—has no doubt he heard all—swears he did not hear Frank say that he told Jo, it was a silly business which would bring them into trouble—sat along side of Frank—Mr. C. stood up—will not swear that Frank did not say that 'he told Jo it was a foolish business'—will not swear that Frank did not say 'it was a hard case that Jo should have the preference when he was to have all the benefit'—will swear that he, F. did not tell Mr. Coleman that he went home after the murder—no conversation about time of the murder—Mr. C. did not ask what time the murder was committed—swears there was no conversation about the dirk—none about the club—Howard street church steps, nor place where club was concealed—did not any body speak to Mr. C. about the bludgeon—Mr. C. mentioned the club in the entry near the door of Jo's cell—is not certain whether Mr. C. or somebody else first told him—knew the fact when he came out of Jo's cell—thinks he did not know before he went into the cell where the club was—thinks Mr. C. told him—don't know—never did know under what *particular step* nor under what *particular flight* of steps the club was found—went from Frank's cell to office—Mr. C. went to see committee—said he should go and see Attorney General—recollects he was to ask Frank, but does not recollect when or where he was to report Frank's answer to Mr. Coleman—nothing was said about how many went into the chamber—nor who perpetrated the murder—knows no part of Mr. C's testimony but what has been stated—knew Mr. C. was to be called—witness expected to be called—expected their testimony would differ—one brother had hopes as witness—offered the pardon to Frank—he might have the opportunity if he chose—each had a chance—if they chose neither might take it—never asked Mr. C. whether Frank had said where the club was to be found—did not read Mr C's note to Mr. White—the note was unsealed—thought it of consequence to deliver the note—searched for him—Sen-

ate not in session ; Legislature in convention ; went into H. of Representatives ; did not apply to the messenger ; did not inquire for him ; went up on business and was in haste to return ; heard of the death of Capt. White about 6 or 7 o'clock, morning ; Mr. A. G. Brown told him that Capt. W. had committed suicide and was found in his bed with a dagger in his side ; something had been said to him about robbery of father's house ; F. mentioned it first ; F. said he found the room and closet doors open ; desk open ; did not know how it came so ; could not tell the day ; brother Frank made the discovery ; never missed any thing ; Frank had been an acquaintance of the Crowninshields 4 or 5 years back ; went to New York with them ; went to Boston to see counsel for his brother ; wanted to see Mr. Coleman before he went into cell ; did not go to bed at all on the night of drawing the assignment ; Mr. Flint was Frank's pastor ; had been to see him ; before he got to Salem, met a friend who had a fast horse ; changed horses to get home sooner ; brother had then no counsel ; chose to go in to hear what was said to them ; wanted to see the business fairly conducted ; wished, for his own satisfaction, to be present when the promise was made ; when he got back Mr. Coleman had gone to Joseph's cell ; when he (witness) went there, Mr. C. refused to admit him.

[The cross examination of Mr. N. Phippen Knapp was managed with exceeding adroitness ; it is utterly impossible to transfer the feelings excited in the *listeners* in Court, to the *readers* out of it.]

*Solomon Giddings.* Lives in Beverly ; passed Capt. White's house about 11 ; saw nothing that attracted his attention ; was coming from the wharf ; clock struck in Essex-street ; saw no one.

*W. F. Gardner.* Lives next to Capt. White ; passed his house about half past 10 ; coming from Mr. Dealand's ; there was a party at Mr. Dealand's ; was breaking up ; saw nothing which attracted his notice ; don't remember that he left any one behind him at Mr. Dealand's ; don't remember to have observed whether the window-shutters in Capt. W's house were opened or closed ; don't recollect how many were in company ; perhaps three.

*Mr. Fuller.* Surveyor ; lives in Boston ; has been a surveyor 14 years ; has surveyed for the city ; swears to the accuracy of his plans and explains them to Court and Jury.—(*Court Adjourned.*)

#### TUESDAY MORNING.

*S. P. Fuller, called again.* Nothing can be seen of Capt. White's house from the rope-walk steps ; nothing from the post near the corner of Shepherd's house ; nothing from the post at Bray's house ; can be seen from the southerly side of the street, between Shepherd's house and the rope-walk ; may be seen from the upper part of the passage from Mr. White's garden to Brown street.

*Charles G. Page.* Saw Frank Knapp on the evening of the murder, about 7 o'clock, in Essex street, near Barton's Hotel ; with John Forrester, Birchmore and Balch ; they met Knapp walking alone, he asked them to go into the hotel and take refreshment ; they went in and staid about five minutes ; he left the company. Is a member of Harvard College, and belongs to Salem ; wore a glazed cap about that time ; they are common articles of dress with his class and camblet cloaks also.

*Cross examined.* Can fix the time because, in accounting for him-

self the next morning, he remarked where he was the preceding evening; he recollected what company he was in; had some doubt what evening it was, when he was first asked concerning it, but had recovered it since; he did not, when asked, recollect to have recalled it to mind the next morning, but after consideration, did recollect; said he wanted time to consider—did not say he could not tell—but after consideration one night he did recollect and tell (“Well sir,” said Mr. Webster, “we will not detain you from your studies”—he replied, “It is vacation now, sir.”) In answer to Mr. Gardiner, he said—came to Salem on Saturday before the murder—could not have been out on Sunday evening—cannot be positive whether it was Monday or Tuesday evening that this occurred—knows it was Tuesday evening—went to bed early—it was windy and cloudy.

*Moses Balch.* Lives in Lynde street—thinks he saw Frank Knapp on the night of the murder, but cannot be positive as to the evening—was with him the first and last part of the evening, with Birchmore and Page—first saw him in Essex street between 6 and 7—was with him about three quarters of an hour—saw him next between 8 and 9 in at Mr. Remmons’s in Derby Square, Birchmore was there, and don’t recollect whether Forrester or Page—left about 9—went out to walk all together—went into Essex street—nowhere in particular—he left at the corner of Court and Church streets—don’t know when Forrester left, but believes it was at the Franklin building—has known one or two persons to wear dirks, and they have been quite common since the murder—wore a glazed cap at that time.

*Cross examined.* Frequently walks out in the evening—can’t say more about the night when he met these persons, than that it was Monday or Tuesday—believes it was rather dark and cloudy—was in at Remmons’s smoking when Frank Knapp came in—it was soon after he shut the store, when he saw him the first time—when he went home, all the folks were going to bed—it must have been 10 o’clock.

*Zachariah Birchmore.* Saw the prisoner on the night of the murder—went with him into Barton’s hotel about 7 o’clock—was there about an hour—Knapp went away—saw him again about an hour after, at Remmons’s with Forrester and Balch, who were sitting with him smoking—Knapp came in about half past 8—they all left together about 9—and he left the party walking about half past 9—near the Franklin buildings—it was to the best of his recollection the night of the murder.

*Cross examined.* Is not sure whether it was before or after the murder—thinks it was that night—don’t think there was any conversation about the murder—recollects it was his impression it was that night—cannot recollect any thing more about it, than that—generally wears a hat—don’t recollect what kind of an evening it was.

*John Forrester, jr.* Has taken a walk with Frank Knapp—was introduced to him that evening, a little before 7—went to Remmons’s refectory—saw him there about a quarter before 9.

*Cross examined.* Don’t remember how long he had been sitting at Remmons’s when Frank came in—Remmons keeps a sort of an oyster shop—did not drink at R’s—drank at the hotel—was smoking at R’s—his father’s family lives in Salem—was at the hotel drinking—it was an unpleasant evening—before the murder—night of the murder or night before—was as likely to be one night as the other—the night of the murder was unpleasant, the night before was pleasant—recollects,

for he was out walking—don't recollect where—don't recollect who was with him—went out after 6 and returned about half past 9—can't tell what month it was in—April he believes—cant tell whether first or last part—nor whether 20th or 25th, or either of them—can't state whether it was the evening of the murder, or the evening before, or the evening after—did not walk in the company of those persons but one evening.

*Justice Murdock.* Lives in Brighton, keeps a public house—saw a man there Monday, the 5th of April, that he has since understood is Palmer—wrote his name there J. C. Hall—staid till Tuesday, 2 or 3 o'clock afternoon—don't know where he went—said he was going to Boston, and walked off in that direction—did not see nor hear any more of him—5 miles from Boston to Charlestown—about 12 or 13 to the half way house.

*Joseph J. Knapp.* Is the father of the prisoner—failed on the 6th of April—was at home on that night a little before 10—came from Mr. Waters' house in Derby street to his own in Essex street—was in the keeping room, Frank came in and asked if he should bolt the door—told him no, that Nathaniel was out and he would wait till he came in—told him he expected Nat. in good season—F. asked if he wanted any assistance—told him no—asked him how the weather was—he said it blew fresh from the east—Frank said it was just, or just after 10—Frank then retired and left him—retired to his chamber, in the third story—only one pair of stairs that goes to the third story—must go up and come down the same way—other doors open to that staircase—Frank usually left his cap on the window seat of the keeping room—remembers having seen him throw it down there, that evening—heard no one in any part of the house but his son Nat.—saw Frank next at breakfast time, half past 7, to 8 o'clock—he came from his chamber—does not remember about his boots ; but he generally put them in the kitchen—usually came home at 10 ; seldom differed from that, which was a strict rule of the house ; Frank will be 20 years old next month ; Nat. was with him, till near 10 ; he left him at Mr. Waters' house ; saw him again about 20 or 25 minutes past 10 ; when he came home to take the key of the door, that he might get in when he pleased ; was assisting him to make an assignment of his property ; Nat. staid a few minutes and retired just after one o'clock ; Nat. went to bed first ; did not go himself till near two ; Nat. retired to his chamber, immediately after he came in ; did not see either of his sons in their chambers that night.

*Cross examined.* Saw Michael Shepherd that night at his son's office, a little after 9 ; not more than 15 or 20 minutes . did not see him later than that ; left Mr. Waters's office about 10 minutes before 10 ; knew the clock had not struck 10 ; saw him the next day ; is not sure where he saw him ; it was at his own house ; in the forepart of the day ; had no conversation about the time of Frank's being at home ; saw him next at the Mercantile Insurance Office ; the next day after the murder, Wednesday ; had no conversation then about the time, when Frank came home ; saw him next on the evening of the same day at the Asiatic Bank ; had a conversation then about the time when Frank came home, and told him, that Frank was at home and abed before half past 10 ; Shepherd had asked him if he could credit what was in circulation ; their arrest had taken place then ; Jos. and Frank had

been arrested then ; the Crowninshields had been arrested before ; remembered then all the circumstances, so that he could tell Shepherd what happened the night before ; (On a question having been put, the witness said) he didn't know but he had missed some questions ; had mistaken the question. (Mr. Webster asked witness what he should like to alter in his statement.) This conversation took place after the arrest ; he saw Shepherd the evening after the murder at the Asiatic bank, but nothing was said then ; about the time the arrest took place, on the same day or the next he had the conversation with Shepherd on the subject ; no person was present ; that was the only conversation ; Mr. Shepherd opened the conversation ; he told him Frank was at home and in bed that night before half past 10 ; told him he himself was at home ; told him he knew the clock had not struck 10 when he left Waters's house ; told him that it was 5 minutes past 10, when Frank came home ; told him about Frank's asking if he should bolt the door ; told him that he recollected having seen Frank throw his cap down on the window seat ; had no conversation with Mr. Treadwell on the subject, that he can recollect ; never told Mr. Treadwell, on being asked, that he did not know what time Frank came home, nor that they said it was before half past 10 ; has no knowledge of having had any conversation with Mr. Treadwell on the subject ; commenced to make the disposition of his property after Shepherd left Waters's ; it was proposed to him by Mr. Shepherd, that evening, to make an assignment ; he sat up to make a schedule of the property he had for Mr. Waters ; he signed the assignment on Wednesday, cannot tell what part of the day ; he was sitting up till 2 o'clock to prepare the schedule from memorandums.

*Aaron Foster.* Lives in Beverly—is the toll keeper of the Beverly bridge—did not see Frank Knapp on the night of the murder—saw him pass in the month of April, several times—recollects his passing four times after the murder, with a dark sorrel horse—can't fix any time before the murder—after he paid his toll and started for Salem, he snapped his whip and said, 'this is the horse to go over the gravel'—he then thought he was one of Mr. White's connexions, and did not appear to care for his death, and thought, if he had that horse when he was robbed he might have run away from the robbers—knows Richard C.—don't recollect having seen Richard and the person together—can't state any particular night, when he saw Frank—has seen Frank pass with Joseph—Frank had somebody with him the night he had the dark sorrel horse—the man paid the toll and gave him a 5 f. piece—receives but few of those pieces—can't testify on oath, who the person was, with Frank.

*James Savary.* Boards at the Lafayette Coffee-House—went down towards Mr. White's house about 4 o'clock in the morning after the murder—saw a man coming out of Mr. White's house, who came towards him, and then, as soon as he saw him, turned and run—the man had on a dark dress, and was of a middle size.

*Mr. Kinsman.* Had taken pains to examine the localities about Brown street—can see Capt. White's house about twenty paces east of the south-east corner of Downing's house.

*Silas Horton.* Was out between 3 and 4 o'clock on the morning after the murder—saw a man near Crossman's court—when he came



in sight, the man turned and made off—did not run—was not near enough to see the dress or size.

*McGlue.* Owed George Crowninshield about thirty or forty dollars—about that time, George wanted fifteen or twenty dollars badly—paid him ten dollars the Friday night before he was taken up—George inquired for him the night of the murder—did not pay him any money that night—owed him for work done at the chaise factory—they turned axletrees there for him—had two lathes there.

*Mr. Choate.* Never saw nor heard of any other confession or affidavit of Palmer's, than the one produced in court and verified by Mr. Saunders.

*Mr. Palfray.* Can't recollect when the flannels were taken in Danvers, but it was on a Saturday evening, and he published a statement of it the next Monday morning, and Richard Crowninshield died the Wednesday after.

*Nathaniel Phippen Knapp.* Don't recollect that he was at home on the evening of the Wenham robbery—don't recollect that he was not at home—did not hear them speaking of arming themselves—did not hear them say, jocosely, that they thought they might have been robbed—never gave any account of such a thing—has never given any account of the visit and conversation between himself, Colman, and Frank, different from what he stated yesterday—has never given any other account concerning the light seen in Mr. White's house.

*George Wheatland.* Has heard Phippen Knapp testify in part—but did not expect to be called as a witness—had mentioned the conversation he had with Phippen Knapp, to Mr. Cabot, and to Mr. Saltonstall, since he heard that Phippen was to testify—the day before the Crowninshields were arrested, Phippen came into his office; he asked Phippen to tell him about the Wenham robbery, for he had been to Ipswich and did not hear it. 'Why,' said Phippen, 'there had been a number of circumstances, such as breaking houses to excite suspicion; and that just before starting, which was a little before half past 8 or 9, they talked jocosely about being robbed, and said they might be attacked by robbers—Frank took a sword cane; they started and came back and made a parade about taking pistols, but went without them;' understood Phippen to say, his brothers then talked jocosely about a robbery; Phippen told him, immediately after the murder, that he passed by Captain White's house, four times on that night, and saw a light in Capt. W.'s chamber, but which time it was, of three of the times, he could not tell; did not pretend to fix which time, but believes he said he could not tell. The witness had a conversation with him, touching the conversation in the cell, between Mr. Colman, Frank, and himself; he asked why Mr. Colman went to see his brothers? Phippen stated, that Mr. Colman was an intimate friend; that he married Joseph, and had been intimate with his wife, and with Mrs. Beckford and the White family. Phippen said, he went to Jo's cell; called, but could not get in, because Mr. Colman was there, and when he was let in, Joseph had been telling Mr. Colman every affair, concerning the murder; when they were leaving Joseph's cell, he told Mr. Colman he must go and tell Frank what they had been about; they then went to Frank's cell; Phippen said he told Frank why Joseph was going to confess; because it would be better for Joseph and the

family. He then asked Phippen if Mr. Colman asked Frank any questions. He said yes, and stated several questions, with the answers Frank gave; does not now recollect what the questions and answers were about, but thinks they must have been about either the club, or being in Brown street; thinks it was one or the other, because he did tell Phippen that that was enough to make Frank a principal; witness expressed wonder that they should get confessions prematurely. Phippen said, it was no matter, for they had evidence enough to convict Dick already; did not pay particular attention to the questions and answers, but does recollect his own reply, that it would make Frank a principal; did not state that he had advanced any fees in the case; he had heard of nothing in Palmer's confession, which could implicate Frank, and therefore he thought the confession premature.

*Rev. Mr. Colman.* Had heard the testimony of Phippen Knapp; does not desire to alter any thing in his former testimony; he first went to the prison, immediately after their arraignment, Friday, 28th May; came away a little before 1; went again at 3 o'clock; the friends of the prisoner, especially Mrs. Knapp, desired him to go. Mrs. K., his mother, asked him not to desert Joseph in his distress; Joseph desired him to call and ask his father and Phippen to come; he did so, and they requested him not to go, because it would be said they were confessing. He said he would not go if Phippen would make excuse for him to Joseph; he went to Phippen's office to see if he had made excuse, and did not find him; waited a quarter of an hour, and then walked towards the jail to meet him, as he saw him coming out of the jail-yard; they met and leaned over the fence in conversation till Mrs. Beckford and Mrs. Knapp came along; he then went along to the prison; while he was talking with Mrs. Beckford, Joseph Beckford, who had been to the cell, came and said that Joseph wanted to see him. Brown, the jailer, came a few moments after, with a similar request; he then went into the cell; Phippen came while he was there. After the conversation with Joseph was concluded, Frank was admitted, and was told that Joseph had confessed; he said it must not be done without Frank's consent; when they went away to Frank's cell he promised to come back and let Joseph know whether Frank did consent; after coming from Frank's cell, Phippen went to the opening over the door of Joseph's cell and said something, he did not know what, but supposed it to be that Frank assented; went up, afterwards, to Boston to see the Attorney General; got the promise of a pardon for one of the prisoners, and on his way back met Phippen, riding with Mr. Field; asked Phippen to come and sit in the chaise with him; he did come, and said he hoped he (witness) had said nothing about Frank's having confessed; said he did not recollect, but would give him a note; wrote one with a pencil to Mr. Stephen White; saw Mr. White afterwards, and observed that he wished to be understood as having given Joseph as authority for what he had heard relative to the murder; saw Phippen afterwards, and told him he might make himself easy; promised Phippen, when they parted on the road, that he would wait till 1 o'clock; did wait till 3, and then went to the cell; Phippen came while he was there.

*Cross-examined.* Thought that Phippen went to Joseph's cell to say that Frank assented; told Dexter he had no doubt about the club; thinks he asked Jo. to tell him whether he told any thing about the

club, and Mr. Dexter interfered and told him he did not say any thing ; did not go to Phippen's office to refresh his recollections, but to compare them ; on the side of the steps where he found the club he recollected but one rat-hole ; there might be more ; did not tell Mr. White that he did not wish to implicate Frank, that would have done what he desired not to do ; the object of going to Jo's cell, when he went with Mr. Dexter, was, as he understood, to learn whether Joseph had particularly designated the place where the club was ; he wished to do this for Phippen's satisfaction, for he never had a shadow of doubt on his own mind ; did not recollect the form in which he put the question to Joseph.—(Adjourned.)

*Michael Shepherd.* Had a conversation with Mr. Knapp, the father, who told him that Frank had kept good hours lately, as Phippen told him ; did not mention any thing about his coming home on the night of the murder ; thinks this conversation was before the arrest of the Crowninshields ; Mr. Knapp did not say any thing about being at home that evening himself, nor about knowing that Frank was at home ; did not say any thing about bolting the door ; did not say any thing about the clock's striking 10 ; witness did not ask when his son came home ; thinks he put no other question, than whether his son had associated with these young men.

*Mr. Treadwell.* On Friday morning the 28th of May, had a conversation with Mr. Knapp—Mr. Shepherd had received the Palmer letter from Mr. Waters—took Mr. Knapp into the private room of the bank and told him that he thought his sons were guilty, and advised him to go and get a confession from one of his sons—because Palmer was arrested and had confessed and would be pardoned and turn States evidence—he said he would go—he then asked Mr. Knapp if he knew where Frank was that night, he said no—then asked him, what time did he come home that night ? said he did not know, but about the usual hour—he then added that he was up very late that night—that is all the conversation he had with him upon the subject.

*Mr. Shepherd again.* Mr. Knapp, the father was very busy the night of the murder making assignment of his property, but saw nothing unusual in his appearance, but was a good deal mortified and disturbed.

*George King.* Tends bar for Mr. Dustin in Danvers, saw Palmer about 6 o'clock on the day Mr. White was buried, staid to supper, nearly an hour and a half—heard Mr. Dustin say he was a suspicious character and wanted somebody to watch him—he was watched—it was not far from 7, when he left the house.

*Stephen Brown.* Lives in Danvers—lived at Lynnfield, at the hotel about the time of the murder—saw a person now known to be Palmer—cannot fix the day of the month—it was Wednesday before the Fast—came in the morning, about half past 9, did not see which way—he was there till Saturday afternoon, except Friday afternoon, when he was gone—saw him between 7 and 8 Saturday morning—but did not know how he got into the house—he said he had been detained in Salem—don't know when he came, nor how he got in—went by the name of Hall.

*Elizabeth Benjamin.* Lives with Mr. Joseph J. Knapp—recollects the night of Capt. White's murder—does not remember if Frank was at home that night—he slept at home, or she would have noticed it in

making the beds—she went to bed about 9—Frank came down as usual on the next morning—Phippen did not go to bed that night as she remembers from the bed—she found him in the morning writing about 5 o'clock, with the shutters unopened—did not observe any thing unusual about Frank that morning—saw Frank and Joseph when they started for Wenham the night of the robbery—does not recollect seeing Phippen at that time.

*N. P. Knapp again.* Recollects the conversation with Mr. Webster at the time he had referred to—went to ask him, relative to engaging counsel—he said but little, and nothing that Wheaton has testified to—he did not state he was at home the night of the Wenham robbery—he went to Beverly that evening—was with, or saw there, Mr. Field—on the way there he met his brother returning—did not return himself till 9 o'clock—F. said it was fortunate he took his sword cane—he took it because he was to be gone some weeks—all the information he got on the subject he got then, and it was subsequent to the robbery—had no conversation with Wheaton about getting a pistol—he had the pistol under his own lock and key—he does not recollect the conversation about the Wenham robbery—but if he had any it was as here stated—witness related about the time he went to town, &c. on the night of the murder—made copies of the assignment, he thinks two copies—was engaged till after day-break—he never gave any other account of the time when he saw the light in Mr. White's chamber, than he had stated before. He recollects that the object for which Mr. Coleman went to Joseph's cell with Mr. Dexter, was to ask Joseph if he ever told Mr. Coleman any thing in regard to the club. He did not state to Mr. Wheatland what he testified he did, in regard to the conversation in Frank's cell—Mr. Coleman went to ask, because he said he did not get this information from Joseph, surely.

*Henry Field.* Was with Phippen Knapp at the Beverly Lyceum, the night of the murder.

Mr. DEXTER commenced his argument for the prisoner—He cautioned the jury against acting under the influence of previous impressions, or any impressions but such as could be legitimately derived from the evidence, according to the law. He said that great excitement prevailed in the whole community, and it was impossible but they had heard much to the prejudice of the prisoner. He then argued several points of law; and stated, that in the view of the counsel for the prisoner, it was the law, that a man must be actually present, giving aid, to be a principal—that it was not enough that he should be merely present—but he must be so giving aid and abetting the murderer—neither was it enough that he intended to give aid—he must actually give it, and must be where he could give it with effect—aid must be given and it must be effectual aid, or such as might be supposed to be effectual. There had been proof offered of a conspiracy, but to be a conspirator is not to be a principal; he might have procured and contrived the murder, but have been absent at its execution—in which case he could not be convicted under the present indictment. The jury must

find him present at the time of the murder, giving actual and efficient aid to the murderer, or he must be acquitted. No such evidence had been produced. The evidence of a conspiracy rested upon the testimony of Palmer and Leighton, and on that alone. Leighton's testimony was incredible from its very nature and he had besides declared when before questioned that he knew nothing of the matter; how he came to recollect just the point that was wanted, at just the time when it was found he could not do without it might be considered incredible.—Palmer's testimony was wholly incredible and discredited. He had been convicted of an infamous crime, which if it had been done in this state would have excluded him from the stand, and the jury could not believe his story against the life of any one. There was no satisfactory proof of a conspiracy, and the question then is was the prisoner present, as the government say in Brown Street. The jury would remember, that proof of identity is always unsatisfactory, and in this case there was absolutely none, that could weigh a hair against the prisoner. The only proof of identity is the glazed cap; it has been shown that glazed caps are common; their dress was totally different; the man seen in Brown st. wore a camblet cloak; Frank wore a frock-coat; would he have encumbered himself with a cloak; or was he likely to have laid aside his cloak; there is not a particle of testimony that it was the prisoner who stood at the post; there is not the least show of evidence that it was he who was setting upon the Ropewalk steps; would he have set there; would he have exposed himself to recognition, would he have suffered Mr. Southwick to pass him 2 or 3 times and trust his security to a mere dropping of the head; he knew that Mr. Southwick must have known him and inquiry would certainly be made. It was about half or 20 minutes past nine when he was seen in Brown street, now we will show you he could not have been there unless you believe he could have been in two places at once; (here Mr. D. traced his course, as appeared by defendant's witnesses from 7 to 10 o'clock.) The testimony of his father and the domestic tends to prove that when last parted with, he went directly home. If the hypothesis of the government is true, the time of the murder must have been half past 10; this is incredible; there is no proof, and excluding the confession, there is not a single witness to prove it, unless it be that two men were seen in Brown street at half past 10; therefore the murder was committed at half past 10; and the murder being thus proved to have been committed at that time, the men seen in Brown street must have been the murderers; this is reasoning in a circle. Gentlemen, there is no evidence to prove that the murder was committed then, and there is no evidence that it was not committed until many hours after. The physician who was called in the morning to view the body, says that he believed Capt. White to have been dead three or four

hours; his opinion is worth every thing; Mr. Savary says that he was up at 20 minutes before 4 o'clock; that he met a man near the house who seemed to avoid him; Mr. Walker who was up about the same time, met a man who turned round and went away from him; now what is the evidence to negative the supposition that one of these persons seen at that hour and under these circumstances was the man; which do you believe, that the murder was committed at half past 10 by the men seen in Brown street, with no proof but the fact of their being there, or that it was committed between 3 and 4, by the men seen about that hour, having the testimony of the physician in confirmation. Mr. Phippen Knapp testifies, and if he is wrong, why does not Mr. Waters, who was with him testify to the contrary, that he saw a light in Capt. White's chamber at a quarter past 10; now you are called to believe that the assassin entered the house and accomplished his work in 15 minutes after. But for the evidence of Mr. Coleman we should have done; for without this the Government have failed to prove the conspiracy.

(Mr. Dexter here entered into an argument to prove that the prisoner had assented to Joseph's confession, that the decision of the Court was hasty and should be again reversed; the testimony should be excluded. The Court said this was now a question for the Jurors, the Court would instruct them hereafter. Mr. Dexter then entered into an examination of Mr. Coleman's testimony, comparing his statements with those of Phippen Knapp, &c.) Is the confession true? I do not say it is false; the character of the witness was sacred, I will not derogate from its sanctity; but when a clergyman steps out of the sphere of his duty, he becomes a man amongst men; and should be treated as such and no otherwise; for what purpose did he go? in kindness to the family. He tells you so and you must believe it; yet Phippen says he went against the wishes of his family, were their feelings to be soothed by confession? the questions were not asked in kindness; they were asked in a spirit of deadly animosity; the witness had prejudged the prisoner and believed it wrong that he should escape. If he had gone in kindness he would never have asked the questions; surely he had some other motive than idle curiosity. If he wanted to save Jo, why not confine his questions and his visits to Jo's cell; how could he serve Phippen or the family by extorting questions which would condemn the prisoner. The questions were direct—and had an object; why did he ask about the club? was it to gratify an idle and tormenting curiosity? was it not rather to wring from him his heart's blood? The confession contains, if true, four facts each absolutely necessary and each absolutely unsupported by any other testimony. The time of the murder; the identity of the club; the name of the murderer; the fact of his being in the chamber alone: four facts extorted, as confession, from the prisoner to fill up gaps which neither the Govern-

ment, private prosecutor, nor Committee of Vigilance could supply. The witness was not Frank's Pastor, he was a stranger to him; Mr. Flint was his Pastor; Mr. Flint had visited him; but he had made no confession.

[We have not room to follow Mr. Dexter further—his argument employed six hours in the delivery and was managed with uncommon dexterity—at the conclusion he exhibited a plan of the streets, &c., and he endeavored to convince the Jury that, admitting one of the persons seen in Brown street was Frank, he could not be connected with the murder as an accessory present, aiding and abetting; as from the nature of his position he could neither act himself nor furnish the murderer with assistance. Gentlemen, we here rest our cause; these are the last words the prisoner will address to you; the whole evidence is before you, try him by the testimony, and as you truly try him, so may your God and his God judge you.

MR. WEBSTER, *for the prosecution*.—I am not accustomed to represent the government in criminal prosecutions. During my practice at the bar, which has not been very short, I have not more than twice taken part in the prosecution against any man arraigned upon criminal indictment; never, where life was at stake; where life was in jeopardy. It was, therefore, with some regret that I heard the learned counsel for the prisoner assert that I was brought here to *hurry* the jury beyond the evidence, and against the law. Gentlemen, I am sure that no man can *hurry you* against the *evidence*. I am satisfied that no man in this court will be permitted to *hurry you* against the *law*. My coming here has been considered worthy of notice; it would have been more agreeable to me to be elsewhere, I came here not in any official capacity, but as a citizen of this Commonwealth; as one deeply interested in the preservation of its peace; in the security of man's life, and in the security of his property, it was my duty to come here to unite my humble assistance, and give my poor modicum of ability to the discovery of the perpetrators of this most foul and horrible outrage. It has been said that there exists an excitement! Gentlemen, there is cause for excitement; true, *you* should not be excited; *you* must act upon the testimony, and come to the consideration of this cause with minds and consciences free, unshackled and unprejudiced. But there is an excitement; there ought to be an excitement, which should rouse the faculties, and call into operation all possible assistance, even of the dullest apprehension. Who, that values life, peace, quietude and repose, can deny that he is troubled; that he is excited? Gentlemen, I appeal to you; you all heard of this murder, long before you were brought here to try the present issue—did *you* not fear? did *you* not feel this excitement? did *you* go to your beds and sleep as soundly as before? It is impossible; every thing connected with the transaction was of a nature to alarm you; it was a cool, desperate concerted murder; it was neither the offspring of passion, nor revenge; the murderer was seduced by no lion-like temptation; all was deliberation; all was skilful; and now, that all is known, it appears more atrocious than was even apprehended. The murderer was a cool, business-like man; a calculator; a

resolute and determined assassin! The spirit of crime was weighed against life; counted out and delivered by tale; grains of silver against ounces of blood. The assassination was accomplished; the crime assumed a new face; and this New-England murder becomes a new lesson and a new example. Let the painter beware how he exhibits the murderer with the grim visage of Moloch; let him not paint the blood shot eye, beaming with malice and red with revenge; let his features be smooth and unruffled; all calmness, coolness, and deliberation; not human nature in despair, nor in paroxysms; no rushing of the blood to the face; no fiendish distortions—but all calm and unagitated smoothness. In all my professional career—in all my reading, I never met with an account of a murder, executed with so much skill; so much deliberation; so much coolness. At that blessed hour when, of all others, repose is soundest, the murderer goes to his work; in darkness and silence, he enters the house; he does not falter; there is no trembling of the limbs; his feet sustain him; he passes through the rooms; treads lightly through the entries; ascends the stairs; arrives at the door; there is no hesitation; no pause; he opens it; his victim is asleep; his back is towards him; his deaf ear is uppermost; his temples bare; the moon-light plays upon his silver locks; one blow, and his task is accomplished! Now mark his resolution; his self-possession; his deliberate coolness. He raises the aged arm; plunges the dagger to the heart! not once only, but many times; replaces the arm; replaces the bed-clothes; *feels the pulse*; is satisfied that his work is perfected, and retires from the chamber; he retraces his steps; no eye sees him; no ear heard him; he is master of his own secret, and he escapes in secret. That was a dreadful mistake; the guilty secret of murder never can be safe; there is no place in the universe; no corner; no cavern, where he can deposit it, and say 'it is safe,' the general administration of Providence forbids it; the elements of our nature conspire against secrecy; they declare emphatically, that the murderer shall not escape detection; he lives at war with himself; his conscience is a domiciled accuser, that cannot be ejected, and will not be silent. His tormentor is inappeasable; his burthen intolerable; his bosom's secret over-masters him; subdues him; he succumbs; his guilty soul is relieved by confession, or suicide; and suicide is confession.

We cannot follow Mr. Webster further without increasing our Report to a size beyond the *price* at which we propose to issue it. His argument will, we understand, be reported at large. If it should be accurately reported, the annals of bar eloquence will not contain its superior. In the course of the argument Mr. W. alluded to the charge of a prejudicial excitement, said, "That it should not be forgotten that there might also exist a counter excitement produced by a morbid interest in the fate of the bold, daring and resolute perpetrators. This unhallowed feeling had increased rather than diminished—this unaccountable principle of our nature had been lately used to great account, by one (Bulwer) whose genius had endowed vice with attraction—disguised moral deformity with beautiful conceptions—exposed human vice to inhuman admiration.

He then went on to state the inferences drawn by the counsel for the government from the evidence in the case. He said



that suspicion fixed upon the Knapps ; because they were the only persons interested in the death of Capt. White—that the conspiracy was proved by the testimony of Leighton and Palmer—that the presence to aid and abet the murder was proved by Southwick, Bray and Webster, and the confessions of Frank himself confirmed the whole, though they disclosed no one fact, which was not known to the government before.

He then continued, the indictment charges the prisoner with aiding and abetting in the murder of Capt. White—it charges him with being a principal in the second degree, and you will be instructed that that presumes that he was present, aiding and abetting—you must be satisfied that he is guilty in the manner in which he is charged, beyond all reasonable doubt. I can wish nothing better for you gentlemen than that you should go home with confidence in the right discharge of your duty. It has been truly said, that this will be a day long to be remembered. It will be long remembered, because it is a day full of important duty to be performed or neglected. It will follow you, gentlemen, it will follow us all, as duty accomplished, or as duty neglected—and if there is any thing, which is at all times and every where present, it is the consciousness that we have discharged ourselves well of every important trust. If we could take the wings of the morning and fly into the uttermost parts of the east, the sense of memory would be present there—if we seek to cover us with darkness, it will be there—at the close of life it will be with us—and at that solemn hour, the consciousness of duty discharged, or of duty neglected, will be there, to afflict us if disregarded, or to console us if under the will of the Almighty, it has been performed.

Judge Putnam then asked the prisoner, if he had any thing more to say, in addition to what had been said by his counsel.

He replied—"I have nothing more to say."

Judge Putnam then proceeded to charge the Jury.

He stated a few points of law applicable to the case, that any one of a conspiracy was bound by the acts of all the conspirators, either in pursuance of the original plan, or to effect concealment.

That an accessory before the fact, was one who counselled, procured, or advised to the commission of the murder, but did not aid or abet in its commission.

That a principal in the second degree, was one who gave aid, abetment, or encouragement to the principal murderer, while he was doing the deed ; and that this might be done, by being in any convenient place to prevent interruption, by giving signals, by encouraging the heart and strengthening the hand of the perpetrator—or by aiding him in making an escape from the scene. If a person was any where, so that he could give aid and encourage the murderer or assist him in his retreat, he was present at the fact, and was a principal in the crime. Even if

he did not give any aid, because none was needed, yet if he went to a convenient spot, for the purpose of giving aid, it amounted to the same thing in the law as if he did actually give aid. His presence for that purpose, made him a principal.

He then commented on the evidence, especially as related to the presence in Brown street on the night of the murder. He said the jury must be convinced, beyond a reasonable doubt, that the prisoner was there, and that he went for the purpose of giving aid. He said if the jury were satisfied that the prisoner was in Brown street for any of the purposes above mentioned, he must be convicted; but if they believed that he was an original conspirator, and if they believed he was present in Brown street, but that he was there merely for the purpose of gratifying his curiosity, or finding out whether the murder had been committed, and not to give aid or assist an escape, he must be acquitted on this indictment.

The charge was concluded at 1 o'clock on the 9th day of the trial. The jury retired, and remained out till Friday, the 10th day, a little before noon. They then came in, and said they had not agreed, nor was there any hope that they would agree.

The Court asked if they doubted about a point of law, or of fact. The foreman said they doubted about both: in the first place, whether the prisoner was proved to be in Brown street, and in the next, whether, if there, he was there for the purpose of giving aid.

The Court said that these were both points of fact for the jury to decide, and the Court give them no instructions touching that matter, farther than to recapitulate the law applicable to those points, which was briefly done.

The jury was then sent out again, and remained till the afternoon of the same day, when, declaring that they did not agree, and could see no hope of agreeing, they were discharged.

The Court desired to go on to impanel another jury to try the same cause, and to proceed immediately. But the counsel for the prisoner moved a postponement till the November term, alleging, that in the present state of public excitement, it would be impossible to get an impartial jury, in whose hands the fate of the prisoner could be safely trusted. The Court, however, thought that this objection to an immediate proceeding, was not sufficient; and Mr. Dexter then stated, that an important witness in behalf of the prisoner was absent, and would not return at present, and offered to file an affidavit of that fact. The Court adjourned for one hour, to enable the counsel to prepare an affidavit, when it would meet to consider the question, and hear the government counsel in answer.

At this time the grand jury came into Court, as had been previously ordered, and presented several new bills of indictment relating to the persons now accused of the murder of Capt.

White, and were discharged by the Court from all further attendance, having accomplished all the duty assigned to them by the law officer of the state.

The Court came in at half past 5 o'clock.

Mr. Gardiner for the motion of *continuance* read three affidavits; one by prisoner—one by N. P. Knapp—one by R. Rantoul, severally sworn to by the Clerk of the Court.

The prisoner swears that his brother S. H. Knapp; at present from the country, would, if he were present, swear that prisoner went into his chamber about the time he is charged with having committed the murder, and spoke to him—that he answered him—that prisoner returned to his own chamber, and shut the door, that his brother, S. H. Knapp, heard him shut the door—that the prisoner did not expect to be confronted with the testimony of Mr. Colman—that he did not expect to be accused as principal, and had not prepared himself to prove an *alibi*.

N. P. Knapp swears, that he believes, that what the prisoner alleges is true, that his brother S. H. K. would swear, &c. and that his testimony is material evidence in his favor.

Mr. R. Rantoul swears, that he was present at Justice Savage's at the examination of the prisoner, and that it was not then thought necessary that his brother S. H. Knapp, should postpone his voyage to South America, on account of this trial, as his evidence was not deemed necessary—the prisoner being then accused as an accessory and not as principal.

Mr. Webster against the continuance, argues that the testimony of the witnesses present is sufficient to that point, without the presence of Mr. S. H. Knapp, and is willing to admit, that he would swear as alleged in the affidavit.

The Court decided against the motion for continuance, and adjourned until Saturday morning, at 9 o'clock, for the empannelling a new jury, and proceeding to the second trial of John Francis Knapp, upon the same indictment.

---

NOTE A PAGE 17.

The Wenham robbery as it is called, is a story related in the "Essex Register" of Monday, May 3, 1830—upon the authority of the brothers Joseph and Frank Knapp. Their story as told to the Editor was this:—They were going on the Wednesday previous, from Salem to Wenham in a chaise; when near Wenham Pond, about half past nine in the evening, three footpads came towards them—one seized the horse by the head, and the other two came one on each side of the chaise, near the boot; one of them laid hold of a trunk and was struck by one of the brothers with the but end of his whip—the other brother having a sword cane drew it, jumped out of the chaise and pursued the person nearest to him, who ran and was followed by the others. The footpads leapt over a wall and concealed themselves in a pine wood. It was said they were alarmed by the approach of the mail stage. The brothers continued their journey unmolested—other particulars were related—but the whole account is evidently a forgery.

*John Pierce from:  
Rev. Henry Colmans*

---

**TRIAL**  
FOR  
**THE MURDER**  
OF  
**MR. WHITE.**

---

SALEM EDITION.

---



2

A  
**REPORT**  
OF THE  
**EVIDENCE AND POINTS OF LAW,**  
ARISING IN  
**THE TRIAL**  
OF  
**JOHN FRANCIS KNAPP,**  
FOR  
**THE MURDER**  
OF  
**JOSEPH WHITE, ESQUIRE.**  
BEFORE THE  
SUPREME JUDICIAL COURT  
OF  
THE COMMONWEALTH OF MASSACHUSETTS;  
  
TOGETHER WITH  
**THE CHARGE**  
OF HIS HONOR CHIEF JUSTICE PARKER,  
TO THE GRAND JURY,  
AT THE OPENING OF THE COURT.

---

SALEM:  
PUBLISHED BY W. & S. B. IVES.  
1830.

1851 Dec 11  
W. B. S.  
Hon. John L. Pierce  
of Brookline

DISTRICT OF MASSACHUSETTS—TO WIT:

*District Clerk's Office.*

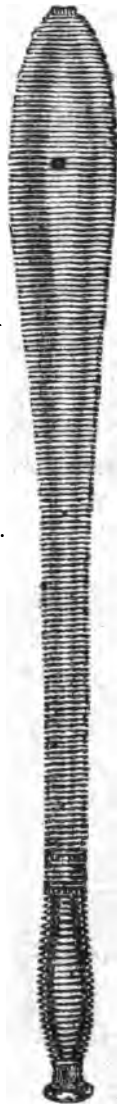
BE IT REMEMBERED, That on the fourteenth day of August, A. D. 1830, in the fifty-fifth year of the Independence of the United States of America, WILLIAM AND STEPHEN B. IVES, of the said District, have deposited in this office the title of a book, the right thereof they claim as proprietors, in the words following, to wit:

*"A Report of the Evidence and Points of Law, arising in the Trial of John Francis Knapp, for the Murder of Joseph White, Esquire. Before the Supreme Judicial Court of the Commonwealth of Massachusetts;—Together with the Charge of his Honor Chief Justice Parker, to the Grand Jury, at the opening of the Court."*

In conformity to the Act of the Congress of the United States, entitled "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned:" and also an Act entitled "An Act supplementary to An Act, entitled An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books to the Authors and Proprietors of such Copies during the times therein mentioned; and extending the Benefits thereof to the Arts of Designing, Engraving and Etching Historical and other Prints."

JOHN W. DAVIS. } *Clerk of the District  
of Massachusetts.*

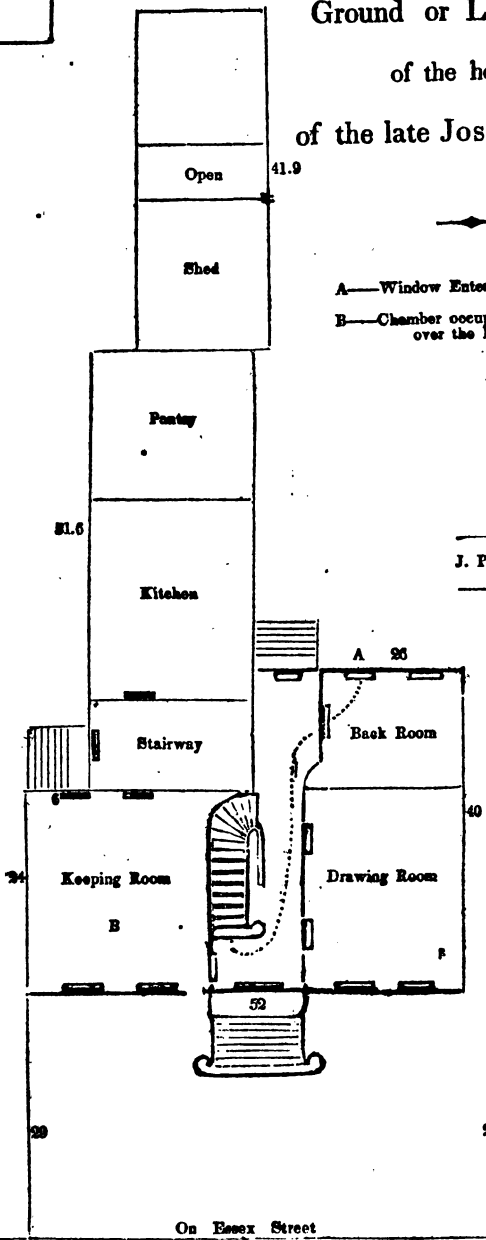
*Representation of the Club, referred to by  
Rev. Mr. Colman, on page 34.*







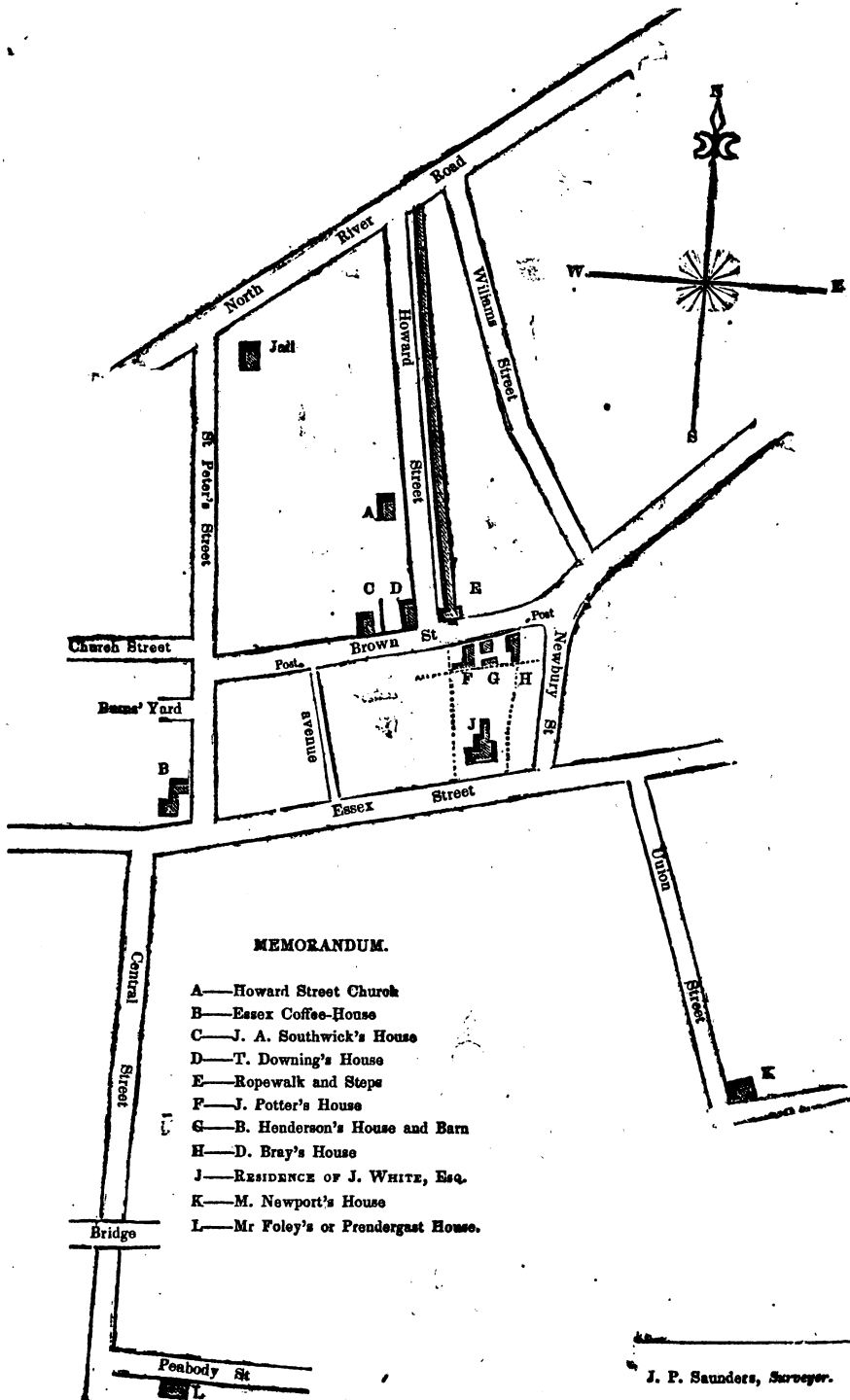
Ground or Lower Floor  
of the house  
of the late JOSEPH WHITE.



A—Window Entered  
B—Chamber occupied by Capt. White,  
over the Keeping Room.

J. P. Saunders, Surveyor.

T. DeLand's



**MEMORANDUM.**

- A—Howard Street Church
- B—Essex Coffee-House
- C—J. A. Southwick's House
- D—T. Downing's House
- E—Ropewalk and Steps
- F—J. Potter's House
- G—B. Henderson's House and Barn
- H—D. Bray's House
- J—RESIDENCE OF J. WHITE, Esq.
- K—M. Newport's House
- L—Mr Foley's or Prendergast House.

J. P. Saunders, Surveyor.

---

**NOTE.**

**BY THE PUBLISHERS.**

We intended to have published the Arguments of Counsel and the Charge of His Honor Judge Putnam to the Jury, but it having become necessary to issue the Trial sooner than we had anticipated, we are compelled to omit them;—and if the next trial should be published, we shall then insert the charge and arguments at large.

We intended also to have published, in an Appendix, a Brief Sketch of the Proceedings of the Committee of Vigilance, and certain Documents connected with the developement of the facts relating to this Murder—but their nature is such, that a publication of them, at this time, is deemed inexpedient.

---

COMMONWEALTH OF MASSACHUSETTS.

At the Supreme Judicial Court for the Commonwealth of Massachusetts, holden at Salem, on the second Tuesday in July, A.D. 1830, pursuant to an Act of the Legislature, passed June 5, 1830,

PRESENT,

Hon. ISAAC PARKER, LL.D., *Chief Justice.*  
Hon. SAMUEL PUTNAM, LL.D.,  
Hon. SAMUEL S. WILDE, LL.D., } *Justices.*  
Hon. MARCUS MORTON, LL.D., }

The Grand Jury being empaneled and sworn, the following very lucid and impressive charge was delivered to them by his Honor Chief Justice Parker.

*Gentlemen of the Grand Jury,—*

THIS Court is convened out of its ordinary season in virtue of a special appointment of the Legislature made at its last session, and you have been summoned here by the same authority, and having had the oath administered to you, which is prescribed by law to qualify you to act in the capacity of Grand Jurors, you now have become the Grand Inquest of the Commonwealth for the body of this County of Essex, with all the power and duties which pertain to that body when attending the ordinary sessions of this Court in relation to such cases as come within the purview of the statute above referred to.

The jurisdiction given to the Court by this Act of the Legislature, extends to all crimes and misdemeanors which may have been committed within the body of this County before the passing of this Act; such as may have occurred since that time are to be left to the usual administration of justice at the succeeding regular term of the Court.

Notwithstanding the general terms in which the jurisdiction is given, comprehending all crimes and misdemeanors, there is reason to believe that the chief purpose of the Legislature in establishing this term, was that judicial inquiry should be made into a transaction of a most afflictive nature which took place in this town some months since.

This transaction was of a nature to excite alarm and agitation, not only in the vicinity where it happened, but throughout the Commonwealth and even beyond it.

An aged and respectable citizen, living in the centre of this populous town, so long remarkable for its tranquillity, peace and order, he being surrounded by all those circumstances which usually give security to the property and person, has been assassinated in his bed, probably in the depth of sleep—his skull fractured by a blow from some heavy weapon—his body pierced with many wounds—and this was done with such secrecy that not a trace for a long time appeared to be left, by which the perpetrators of so horrid a deed could be discovered. No wonder that the shock felt here was so great; it has vibrated through the whole community.

Murder is under all circumstances an appalling crime, it exhibits in the

perpetrator the deepest stain of depravity of which human nature is capable. But when in the stillness of night, during the hours of repose, the assassin invades the quiet mansion—steals into the chamber of sleep—and converts that sleep into death by one fell blow, and as if insatiate of blood seeks the heart of the victim, which had already ceased to beat—there is no stoicism, no philosophy, hardly any religion which can repress those feelings of terror, those expressions of horror, which such a tragedy is calculated to produce.

I speak thus of the crime because it is notorious. We all feel alike about it, nor is there any occasion to suppress the feeling, but it must be regulated and kept within just bounds.

You are convened here not so much to inquire if a crime has been committed, though even that must be proved to you by legal evidence, as to seek out the perpetrators and present them, if discovered, to the bar of this Court for trial. It is the duty of the Court to warn you against suffering your indignation for the crime to affect your inquiries for the offenders. The popular voice justly cries out for vengeance, but it is only upon the guilty it ought to fall.

There is danger in all great excitements that the mind may be thrown off its balance, that the process of inquiry may be too rapid to be sure, that the suspected may readily be believed to be guilty, that prepossession may supersede proof. How apt are we all upon hearing of the commission of some great crime to listen greedily to every circumstance which has a tendency to fix the guilt upon some individual, to shut our ears against exculpatory facts, and to pass sentence of condemnation before any hearing and without any trial.

This is a state of mind which disables us from acting impartially in the office of judge or juror. We are to stand indifferent between the Commonwealth and the accused; ever to presume that he is innocent until we have proof that he is not. We are to sift and weigh all the facts produced in proof with a hope that they may all be consistent with his innocence. A Grand Jury especially, who by the very nature of their duty are prevented from hearing the accused, or any evidence in his favor except what may be drawn from the witnesses produced against him, should be cautious not to act hastily, or upon slight evidence.

They ought to be satisfied before they agree upon an indictment, that the evidence as it appears before them, is sufficient to convict him of the imputed crime, for if it should not be sufficient under those circumstances, what probability is there of a conviction when the party shall be put upon his full defence, with the privilege of adducing counter evidence in his favour, and of counsel to enforce it? And no citizen ought to be exposed to the anxiety and ignominy of accusation for a capital offence if there be no probable proof of his guilt.

It is a most happy characteristic of our system of criminal justice that it requires deliberate and patient investigation. Let those who complain of the slowness of its pace, consider, that it is framed for the protection of innocence as well as for the punishment of guilt, and that more rapid movements might involve in ruin those who might afterwards be found not to have deserved it. Occasions like the present sometimes arise when a just indignation at some enormous crime pervades the whole community, and the officers of justice are loudly called upon by the public voice to hasten the exercise of their functions, and to purify the land of the blood with which it has been stained, by an early condemnation of the supposed perpetrator; but the law moves not from its course, it gives time for deliberation, for the return of sober thought which has been suspended by agitation and excitement,—it calls for proofs—it gives reasonable opportunity for defence—it proceeds warily and cautiously—and decides only when it may be presumed there is little room to doubt the rectitude of its decision, and this is all which can be attained by human tribunals, for fallibility is stamped upon every thing human.

Under the guidance however of a wise Providence, and with a due observance of legal formalities and rules, we may trust ourselves even with the lives of our fellow beings; for the law has committed them to our charge, and if we severally discharge our duty with honest hearts and with the use of all the light bestowed upon us, we shall stand approved to our consciences and to the Great and Just Judge whose ministers and servants we are.

There is more than common occasion for recommending the exertion of your powers to throw off all preconceived opinions, and to bring your faculties to the examination of the evidence which will be submitted to you with entire self collectedness and impartiality. The extraordinary character of the crime has seized upon all imaginations, and pre-occupied many judgments. An unusual publicity has been given to such discoveries and disclosures as have from time to time been made.

The self execution of one who has been supposed the immediate agent of the cruel deed, has given additional force to opinions before perhaps strongly conceived.

Gentlemen! It is on such great occasions that superior wisdom is called for. In the ordinary course of crime, the machinery of justice will work steadily and regularly, with only its customary superintendence. But when great and astonishing events occur, which call for judicial investigation—when the public mind is agitated and disturbed, and the popular voice is audible, crying for vengeance, it is then that those who are clothed with the robes of magistracy, or who otherwise become functionaries of the law, are to divest themselves of human passions—to elevate themselves above the dense atmosphere which surrounds them, and imitate, in their humble measure, the wisdom and impartiality of the God of Justice!

Gentlemen! We cannot but regret the unusual publicity that has been given to the facts and circumstances which have transpired on this mournful subject. We shall see, I fear, that it will have had a tendency to impede the course of inquiry; but we trust you, who represent the country in the first stage of this solemn proceeding, will assume the attitude of impartial judges of the evidence; that you will diligently inquire and true presentment make; that you will be influenced neither by prejudice nor favour; that you will present things truly, as they come to your knowledge, according to the best of your ability and understanding.

It is not necessary upon the present occasion to discuss the various classes of homicide, in order to distinguish that which is justifiable, as in self defence—that which is the effect of sudden provocation, which may be manslaughter,—and that which is the effect of malice aforethought, which is murder.

If it shall turn out in evidence that the house of the deceased was entered in the night time—that he was slaughtered in his bed; whether the object of the perpetrator was plunder, revenge, or the hope of reward from others who may have incited the deed, it is murder of the deepest die in regard to those who may have given the death wound, and any who may have been *present*, aiding and abetting the crime.

Such is the common law, and such is the provision of the statute of this Commonwealth, which enacts that if any person shall commit the crime of wilful murder, or shall be present aiding and abetting in the commission of such crime, or not being present shall have been accessory thereto before the fact, by counselling, hiring, or otherwise procuring the same to be done, every such offender who in the Supreme Judicial Court shall be duly convicted of either of the felonies and offences aforesaid shall suffer the punishment of death.

It may be a subject of inquiry, what constitutes *presence* within the meaning of the second branch of this enactment, *present aiding and abetting* in the commission of such crime.

And the construction of this phrase, which is taken from the common law, has been settled in ancient times by wise and learned sages of the law, and that construction adopted and sanctioned by successive judicial decisions down to the time of the adoption of our Constitution, so that the legislature which enacted this statute, without doubt referred to this construction when they framed it.

By this construction it is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator or of the victim, to make him a principal.

If he be at a distance, co-operating in the act by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, *having knowledge of the purpose and object of the assassin*,—this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder.

The distinction between a person thus situated and one who is denominated by the statute an accessory before the fact is, that the latter is not only in every sense absent from the scene of crime, but is not an immediate participator in it; he may not know the time when and the place where it is committed. He has previously, perhaps days or months before, hired, counselled or procured the deed to be done, but he has no immediate agency in the deed.

His crime is deemed by the law to be as great as his who strikes the blow; it is often in a moral point of view greater, as it may combine a greater number of desperate and diabolical motives, without the influence of which the crime would never have been committed. It denotes the savage heart of the murderer, without his bold and daring hand. It puts in peril his own soul, and the souls of others, who, but for him might have gone free from the guilt of blood. Thus the law punishes the accessory before the fact in the same manner as it punishes the actual perpetrator—they are alike murderers.

There is at the common law a difference, and it is supposed to exist also under our statute, in regard to the form and the time of trial, between those who are called principals, and accessories before the fact, it being held that unless there be a conviction of a principal there can be no trial of the accessory. This difference, if it exist, is a relic of the unwise refinement of ancient times, there being no good reason why an accessory before the fact to a crime *proved* to have been committed, should not be tried and punished, although the principal may have escaped, by death or otherwise, the punishment which awaited his crime in this world.

But if occasion should arise to examine this point, and the common law should not be found to have been varied by our statute, the legislature will probably afford a remedy for future cases.

I have thus, gentlemen, I believe discharged all the duty of the Court, in this stage of its proceedings, in regard to the principal subject which will require your attention. If before the passing of the act under which we assemble, other offences cognizable in this Court shall have been committed, and not yet have been before a grand jury, you are authorized but not required by the statute to inquire into and present them. In regard to such cases as well as to any questions of law which may arise upon the subject on which I have given you the charge, you will have the advice and assistance of able and experienced officers of the government, whose duty it is to facilitate your investigations, and to reduce the result to such form of presentment as the nature of each case may require.

Gentlemen—Your duty and ours may be arduous and embarrassing—that it may be discharged with clear understandings and firm hearts let us look to the dispenser of all light and wisdom for his blessing upon our endeavours.

The customary prayer was then offered up by the Rev. Mr. CLRAVE-  
LAND, and the Court, having been thus opened, was addressed by  
FRANKLIN DEXTER, Esq., of Boston, as one of the Counsel for the  
prisoners in the following motion:

**DEXTER.** Before the grand jury go out, I would respectfully move,  
that they be instructed as to what evidence they should receive. This  
was done in a celebrated case;—that of Aaron Burr.

**CHIEF JUSTICE.** That case is remarkable for that, and another cir-  
cumstance, not known to our law, that is, the challenge of grand jurors.  
With us the Court never instruct the grand jury upon the nature of the  
evidence to be heard before them. There will be a revision of their do-  
ings and it is unnecessary to go into the inquiry before hand.

**SOLICITOR GENERAL.** It is a sufficient answer to the suggestion of  
the gentleman, that in the case alluded to, Chief Justice Marshall said  
that "it was usual and the best course for the court to charge the jury  
generally, and to give their opinion on incidental points as they arose,  
when the grand jury themselves should apply to them for information."

**DEXTER.** It is true that the remark was made by Chief Justice Mar-  
shall, but he did send special instructions to the grand jury before the  
question arose. He did direct that "no affidavits nor papers, containing  
distinct substantive testimony against the accused should be sent to the  
grand jury."<sup>†</sup>

**CHIEF JUSTICE.** It would be a very inconvenient practice. The law  
reposes confidence in the officers of the government; they are not sup-  
posed to procure an indictment against a man upon improper evidence.

It is the opinion of the Court that they cannot go out of the usual  
course. They think it would be a good rule for the officers of the gov-  
ernment to adopt, to offer no evidence to the grand jury, which they  
would not be willing to offer in Court.

**DEXTER.** Before the jury retire, I wish to inquire if the English prac-  
tice does not prevail here, to indorse the names of the witnesses exam-  
ined before the grand jury upon the indictment.

**SOL. GENERAL.** We have a better practice, and that is, to return  
the names of the witnesses examined before the grand jury, and that  
makes a part of the record of the case.

The Court then adjourned to Thursday morning, at 9 o'clock. Thurs-  
day morning the Court met and adjourned to 3 o'clock, P. M. After-  
noon, met and adjourned to Friday morning, at 8 o'clock.

#### FRIDAY MORNING.

At the opening of the Court, the **CHIEF JUSTICE** remarked that there  
seemed to be an intention of publishing in the newspapers, the proceed-  
ings of the Court from day to day. Such publications must necessarily  
be imperfect, and perhaps mischievous. The Court is, therefore, decided-  
ly of opinion that the proceedings ought not to be thus published, as  
they would give only imperfect information. What passes one day may  
be essentially altered or modified by the doings of a subsequent day.—  
There may be no objection to publishing the state of the case as it ad-  
vances; but there must be no publication of the evidence before the tri-  
als are concluded.

The Grand Jury came into Court with the bills which they had found.  
The prisoners, John Francis Knapp, George Crowninshield, and Jo-  
seph Jenkins Knapp, junior, were then placed at the bar and the follow-  
ing indictment was read by the Clerk.

[\* Vide Burr's Trial, Vol. 1, p. 174.]

[† Burr's Trial, Vol. 1, p. 199.]



## INDICTMENT.

## COMMONWEALTH OF MASSACHUSETTS.

Essex, ss—At a special term of the Supreme Judicial Court, begun and holden at Salem, within and for the said county of Essex, by virtue of an act, entitled "An Act to provide a special term of the Supreme Judicial Court, within and for the County of Essex," on the third Tuesday of July, in the year of our Lord one thousand eight hundred and thirty.

The Jurors for the said Commonwealth upon their oath present, that John Francis Knapp, of Salem, in the county of Essex, mariner, not having the fear of God before his eyes but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, with force and arms, at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth then and there being, feloniously, wilfully and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon made of hard wood, and loaded in the head thereof with lead, called a bludgeon, of the value of twenty cents, which he the said John Francis Knapp in his right hand then and there had and held, the aforesaid Joseph White in and upon the left side of the forehead, extending over the left temple of him the said Joseph White then and there feloniously, wilfully and of his malice aforethought did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, extending over the left temple of him the said Joseph White one mortal wound of the length of three inches, and of the width and depth of two inches; of which said mortal wound the aforesaid Joseph White then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Francis Knapp, him the said Joseph White in manner and by the means aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute, in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that George Crowninshield, of Danvers, in the county aforesaid, machinist, and Joseph Jenkins Knapp junior, of Wenham, in the county aforesaid, mariner, before the felony and murder aforesaid, in the manner and by the means aforesaid, was done and committed, to wit, on the second day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp, the felony and murder aforesaid, in manner and by the means aforesaid, to do and commit; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid upon their oath aforesaid do further present, that the said John Francis Knapp, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, with force and arms at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon called a dirk, of the value of fifty cents, which he the said John Francis Knapp in his right hand, then and there had and held, the aforesaid Joseph White, in and upon the left side of the body, and in and to the heart of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate, stab and wound, giving to the said Joseph White then and there with the dirk aforesaid, in and upon the left side of the body and in and to the heart of him the said Joseph White, several mortal wounds and stabs half an inch in length, and a quarter of an inch in width, and six

inches in depth, of which said several mortal wounds and stabs he the said Joseph White then and there instantly died; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that before the felony and murder aforesaid, in manner and form last aforesaid, was done and committed, to wit, on the second day of April, in the year of our Lord aforesaid, the aforesaid Joseph Jenkins Knapp junior, and George Crowninshield, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully, and of their malice aforesaid, did counsel, hire and procure the said John Francis Knapp the felony and murder aforesaid, in the manner and by the means last aforesaid, to do and commit:—against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that one Richard Crowninshield junior, late of Danvers, in the county aforesaid, machinist, and John Francis Knapp, of Salem aforesaid, in the county aforesaid, mariner, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of their malice aforesaid, did make an assault, and he the said Richard Crowninshield junior, with a certain deadly weapon, made of hard wood, and loaded with lead in the head thereof, called a bludgeon, of the value of twenty cents, which he, the said Richard Crowninshield junior in his right hand then and there had and held, in and upon the left side of the forehead, over the left temple of him the said Joseph White, then and there feloniously, wilfully and of his malice aforesaid, did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, over the left temple, of him the said Joseph White, one mortal wound, of the length of three inches and of the width and depth of two inches; of which said mortal wound he the said Joseph White, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Richard Crowninshield junior, him the said Joseph White, then and there, in manner and form last aforesaid, feloniously, wilfully and of his malice aforesaid, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the fifteenth day of June, in the year aforesaid, the said Richard Crowninshield junior, with force and arms, at Salem aforesaid, in the county aforesaid, as a felon of himself, feloniously, wilfully and of his malice aforesaid, did kill and murder himself, so that he the said Richard Crowninshield junior, cannot be further proceeded against or held to answer for the felony and murder last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Francis Knapp, at the time the said felony and murder in manner and form last aforesaid, was done and committed, feloniously, wilfully and of his malice aforesaid, was then and there present, aiding and abetting the said Richard Crowninshield junior, the felony and murder of the said Joseph White in the manner and by the means last aforesaid, to do and commit. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Francis Knapp, the aforesaid Joseph White then and there in the manner and form last aforesaid, feloniously, wilfully and of his malice aforesaid, did kill and murder, against the peace of the Commonwealth aforesaid and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp junior aforesaid, and George Crowninshield aforesaid, before the felony and murder of the said Joseph White, in manner and form last aforesaid, was done and committed, to wit, on the second day of April in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully and of their malice aforesaid, did counsel, hire and procure the said Richard Crowninshield junior, and the said John

Francis Knapp, the felony and murder aforesaid, in the manner and form last aforesaid, to do and commit; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A true bill—

EBEN'R SHILLABER, *Foreman.*

PEREZ MORTON, *Attorney General.*

A true copy as on file—

Attr. JOHN PRINCE, *jun. Cler.*

To this indictment they severally pleaded "NOT GUILTY." And at the request of John Francis Knapp and Joseph Jenkins Knapp, *Franklin Dexter* and *William H. Gardner, Esquires*, of Boston, were assigned to them as Counsel; and *Samuel Hoar, Esq.* of Concord, and *Ebenezer Shillaber, Esq.*, of Salem, were assigned to George Crowninshield as Counsel, at his request.

Tuesday, July 27, was assigned for the trial.

The prisoners desired separate trials, and if any other Indictment had been found, requested that it might be read to them.

Another Indictment was then read, charging Richard Crowninshield, junior, as principal, and setting forth his death by suicide, and alleging that John F. Knapp, Joseph J. Knapp, jr. and George Crowninshield, were accessories before the fact.

After this Indictment was read and before any plea was recorded, *Mr. Hoar* suggested to the Court, that it might be doubtful whether the general plea of not guilty, could be received to both indictments at the same time. He said he was not sure that the general plea was not the only one, but requested a little time for investigation.

The CHIEF JUSTICE observed, that he knew of no defence which might not be given in evidence under the general issue, but that the Indictment might lie, without entering any plea at present.

TUESDAY, JULY 27.

The Court met at 9 A. M. agreeably to adjournment—present, Judges PUTNAM, WILDE and MORTON. As soon as the Court was opened, Hon. LEVERETT SALTONSTALL, President of the Essex Bar, rose, and addressed the Court as follows :

“ *May it please your Honors :*

Since the adjournment of this Court, an event has taken place, which fills our hearts with sorrow, and will be felt throughout the Commonwealth, as a great public calamity. I need not more distinctly allude to the death of the beloved, the honored, the venerated CHIEF JUSTICE, whom we have been accustomed to see presiding here—who has so many years been an ornament to this bench. A few days since, we beheld him in the seat he has so long filled with the highest reputation—we heard from him a charge to the Grand Jury, distinguished for its clear, thorough and able exposition of the law in relation to the important subjects which were to come under their consideration, and for its pertinent and forcible instructions to them upon their duty. We saw him preside with his accustomed ease and dignity. Only four days since, we saw him in this place, apparently in perfect health, in the full enjoyment of all his bodily and mental faculties, and displaying his admirable wisdom and discretion in the discharge of his official duties. By a sudden, a striking, a solemn dispensation of Divine Providence, he has been removed, and the places which knew him here, will know him no more.

Under these circumstances, the members of the Bar of Essex, feeling deeply a bereavement so sudden, have, in concurrence with our learned brethren from other Counties, who are honoring this Court with their presence, thought that this afflictive event should not pass unnoticed here, in this scene of his last official, professional labors. They have adopted resolutions expressive of their veneration of the character of the deceased, and their grief at his loss, and have requested me to offer them to the notice of this Court, and to ask respectfully that they may be placed on their record, and that this Court would adjourn in consequence of this bereavement, which at present occupies all our thoughts. This duty I perform with melancholy satisfaction, in testimony of our affectionate respect to his memory, which is entitled to all respect from the community, to whom his best services have been always devoted.

It would not become me at this time, in this public place, to undertake to delineate minutely the character of the deceased before those who have so long been associated with him in his official duties and in social intercourse, who knew his worth so well, by whom he was so much beloved and respected—who will deeply deplore his death—to whose feelings it would be more grateful to contemplate the virtues of their eminent friend in the stillness of retirement, than to listen to any public eulogium, however just.

A great man has fallen. The late Chief Justice has held the most important office in the Commonwealth a longer period than any of his predecessors, having been more than twenty-four years a judge, and more than sixteen years the presiding justice of the Court, and with a constantly increasing reputation and usefulness. He was an associate of distinguished men who have gone before him—of the “learned, able and upright Chief Justice DANA, whose long and useful administration in this

\* Sketch of the character of Chief Justice Parsons, by Judge Parker.

Court ought to be remembered with gratitude"—of **SEDGWICK** and **SEWALL**—above all, of the illustrious **PARSONS**, who relied much on his learning, and his sound and correct judgment. Fortunate will it be for his fame, if as just and beautiful a tribute should be offered to his character, as he bestowed on that of his great predecessor.

It is unnecessary for me to speak of his qualifications for his high trust, to those who have been his associates in office. Feeling deeply its importance, his great object was to fill with respectability and usefulness, so conspicuous a station. Though he always took a lively interest in whatever interested the community, every thing else was subordinate to the prompt and faithful discharge of his official duty. To this he was devoted. His labors were almost unremitted, and probably hastened the event which we now so deeply lament.

Few men have possessed higher qualifications for the office he filled, and the judicial career of few has been marked by deeper traces of wisdom and learning. Labored eulogium of the deceased is not necessary—he has himself erected a memorial to his fame, more durable than marble. His legal decisions will remain, a proud monument to his memory—a monument of his great learning, his patient investigation, his clear and discriminating mind, his forcible and logical reasoning, which amounted almost to demonstration, of his perspicuous and classical style, and of the great result of his labors and his life—the settling the law on the sure and broad foundation of justice and equity, which was his great aim.

In that important and difficult situation, a *Nisi Prius* Judge, he conducted the business of the Court with great ease to himself, and satisfaction to the Bar and the suitors. The younger members of the profession, and those of us not young, whose admission to the bar of this Court was under him, will never cease to remember that kindness and urbanity which encouraged us to persevere in our course.

But eminent as he was as a magistrate, it is as a man we shall most love to contemplate him. In private life and manners, he was pure and faultless—So cheerful, social, benevolent, affectionate, and truly liberal, and yet never for a moment losing sight of the true dignity of his high office—for true dignity, the dignity of the Chief Justice did not depend on the artificial aids of ceremonious etiquette or solemn reserve. He loved to diffuse happiness around him. His frank and ingenuous disposition and temper irradiated the whole circle, which he cheered by his presence. We saw the dignified and learned judge, displaying the utmost simplicity of manners, and purity of heart and life. But he has gone—leaving to his family the rich inheritance of a spotless fame, and to the Commonwealth, the learning, labor and wisdom of a long judicial life. In the midst of his labors and his usefulness, he is called from us, but we trust he is called to his reward in a better world. While we were expecting the aid of his learning and experience, in the important trials before us, he is suddenly removed from all earthly scenes! The loss of such a man is incalculable.

But we will not repine at the dispensation, however severe. Let us rather be grateful for the rich blessing we have so long been permitted to enjoy. Let us be grateful for his brilliant and useful judicial career, and that he has done so much honor to the Commonwealth, over whose highest tribunal he has so long presided.

Above all, let us imitate his devotion to duty, his deep sense of responsibility, his christian faith and piety, that when the summons shall come to us, we also may be found ready.

With these remarks upon the melancholy event which has vacated the highest seat on this bench, the proceedings of the Bar are respectfully submitted to the Court."

At a meeting of the members of the Essex Bar, held at the Court-House, during the Special Term of the Supreme Judicial Court, July 27, 1830,

*Resolved*, That the members of this Bar, deeply impressed by the

solemn dispensation of Divine Providence, in the sudden removal by death of Chief Justice Parker, from the Bench of the Supreme Court, since its recent adjournment, would do injustice to the feelings of their hearts, if they refrained from a public expression of the profound sentiments of respect and veneration they entertain for his private and official character, as well as of their strong emotions of sorrow for the bereavement sustained by the Bar, the Bench, and the whole Commonwealth. The purity and integrity of his private life and manners, his various acquirements and extensive learning, his public services and arduous labors, in expounding the laws, during a Judicial career of twenty-four years, have secured for his memory and name, public gratitude and affectionate remembrance. While we deeply lament that he has been thus suddenly removed from the community, his friends, and his family, in the full vigor of his faculties, in the maturity of his wisdom, and at the height of his usefulness, we are consoled by the recollection that he has been faithful in his day and generation, and has by his labors conferred lasting benefits upon posterity.

*Resolved*, That the members of this Bar, in token of respect for his memory, will, during the present term of this Court, wear the usual badge of mourning.

*Resolved*, That the President of this Bar be requested to communicate these Resolutions to the Honorable Justices of this Court, with our request that the same may be entered on the Records thereof, and further that this Court may be adjourned to such time as the Court may be pleased to order.

*By order of the Bar.*

EBEN'R SHILLABER, Sec'y.

Immediately after Mr. SALTONSTALL took his seat, PEREZ MORTON, Esq. the venerable Attorney General, addressed the Court in the following terms:

*"May it please your Honors,*

"It is with a degree of melancholy satisfaction that I express my sincere belief, that these resolutions of the Bar of Essex would be cordially accorded to by every member of the Bar in every County of the Commonwealth; as well as to every sentiment contained in the very able and justly merited introduction.

"Believing that this deeply afflicting event will render your Honors indisposed to proceed to the important business of the County at this time—and knowing that it is the disposition and desire of the Gentlemen of the Bar, that the interesting trials now pending, should for the present be postponed, I venture to move, in conformity to the wishes of the Bar of Essex, that this Court now adjourn to such future day as may best suit the convenience of your Honors."

Judge PUTNAM, senior Justice of the Supreme Court, made the following reply:

"The surviving members of the Court reciprocate, with deep sensibility, the affectionate address of the members of the Bar—alike honorable to them and respectful to the memory of our deplored Chief:

"The community may imagine, but we know and feel the loss which words cannot express.

"He was taken away in the midst of his intellectual strength and judicial labours.—But a few hours have passed since he commenced the immensely important business which has called us together, with a charge to the Grand Jury, clear and impartial as was his great mind. We trusted that he would have led and guided this momentous business to a just result.

"But Almighty God, in his inscrutable Providence, hath otherwise decreed.

"Let us pause—to gather up our depressed spirits—imploing the

Divine assistance in the performance of the duties which may devolve upon us."

The Resolutions of the Bar were then ordered to be entered on the records of the Court, when the Court was adjourned to Tuesday next, the 3d of August, at 9 o'clock, A. M. Both the Grand and Traverse Juries were directed to appear at that time.

#### TUESDAY MORNING, August 3.

Present, PUTNAM, WILDE and MORTON, *Justices.*

The Attorney General entered a nolle prosequi upon the Indictment which had been found against the prisoners, upon which they had been arraigned; and the following Indictment was returned by the Grand Jury:

#### COMMONWEALTH OF MASSACHUSETTS.

**Essex, ss**—At a special term of the Supreme Judicial Court, begun and holden at Salem, within and for the said county of Essex, on the third Tuesday of July, in the year of our Lord one thousand eight hundred and thirty, by virtue of an act of the Legislature of the said Commonwealth, entitled "An Act to provide a Special Term of the Supreme Judicial Court, within and for the County of Essex."

The Jurors for the said Commonwealth upon their oath present, that John Francis Knapp, of Salem, in the county of Essex aforesaid, mariner, not having the fear of God before his eyes but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, with force and arms, at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth then and there being, feloniously, wilfully and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon made of hard wood, and loaded with lead in the head thereof, called a bludgeon, of the value of twenty cents, which he the said John Francis Knapp in his right hand then and there had and held, the aforesaid Joseph White in and upon the left side of the forehead, over the left temple of him the said Joseph White, then and there feloniously, wilfully, and of his malice aforethought did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, extending over the left temple of him the said Joseph White, one mortal wound of the length of three inches, and of the width and depth of two inches; of which said mortal wound the aforesaid Joseph White then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Francis Knapp, the aforesaid Joseph White, then and there, in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute, in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp jr. of Wenham, in the county aforesaid, mariner, and George Crowninshield, of Danvers, in the county aforesaid, machinist, before the said felony and murder was committed in manner and form aforesaid, to wit, on the second day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp, the felony and murder aforesaid, in manner and form aforesaid, to do and commit; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid upon their oath aforesaid do further present, that the said John Francis Knapp, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon called a dirk, of the value of fifty cents, which

he the said John Francis Knapp in his right hand, then and there had and held, the aforesaid Joseph White, in and upon the left side of the body, and in and to the heart of him the said Joseph White, then and there, feloniously, wilfully and of his malice aforethought, did strike, penetrate, stab and wound, giving to the said Joseph White, then and there, with the dirk aforesaid, in and upon the left side of the body, and in and to the heart of him the said Joseph White, several mortal wounds and stabs, half an inch in length, a quarter of an inch in width, and six inches in depth, of which said several mortal stabs and wounds he the said Joseph White then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said John Francis Knapp, the aforesaid Joseph White, then and there in manner and form last aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp jr. aforesaid, and George Crowninshield aforesaid, before the said felony and murder was committed, in manner and form last aforesaid, to wit, on the second day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp, the felony and murder aforesaid, in manner and form last aforesaid, to do and commit—against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that one Richard Crowninshield jr. late of Danvers, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, but then and there being, feloniously, wilfully and of their malice aforethought, did make an assault; and that he the said Richard Crowninshield junior, with a certain deadly weapon called a bludgeon, of the value of twenty cents, which he, the said Richard Crowninshield junior in his right hand then and there had and held, in and upon the left side of the forehead, over the left temple of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, over the left temple, of him the said Joseph White, one mortal wound, of the length of three inches and of the width and depth of two inches; of which said mortal wound he the said Joseph White, then and there instantly died; and that he the said John Francis Knapp, then and there, feloniously, wilfully and of his malice aforethought, was present, aiding and abetting the said Richard Crowninshield junior, the felony and murder aforesaid, in manner and form last aforesaid to do and commit; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said Richard Crowninshield junior, and the said John Francis Knapp, the aforesaid Joseph White, then and there, in manner and form last aforesaid, feloniously, wilfully and of their malice aforethought, did kill, and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the fifteenth day of June in the year aforesaid, he the said Richard Crowninshield junior, with force and arms, at Salem aforesaid, in the County aforesaid, as a felon of himself, feloniously, wilfully and of his malice aforethought, did kill and murder himself, so that he the said Richard Crowninshield junior cannot now be further proceeded against, or held to answer for the felony and murder of the said Joseph White last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp junior aforesaid, and the said George Crowninshield, before the said felony and murder, in manner and form last aforesaid, was done and committed, to wit, on the second day of April in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said Richard Crowninshield junior, and the said John Francis Knapp, the felony and murder last aforesaid, to do and commit; against the peace of the Commonwealth aforesaid and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that one Richard Crowninshield junior, late of Danvers, in the county aforesaid, machinist, and John Francis Knapp aforesaid, not having the fear of God be-



fore their eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms at Salem aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that he the said Richard Crowninshield junior, with a certain deadly weapon, called a dirk, of the value of fifty cents, which he the said Richard Crowninshield junior, in his right hand, then and there had and held, in and upon the left side of the body, and in and to the heart of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate, stab and wound, giving to said Joseph White, then and there, with the dirk aforesaid, in and upon the left side of the body, and in and to the heart, of him the said Joseph White, several mortal wounds and stabs, each of the length of half an inch, and of the width of one quarter of an inch, and of the depth of six inches, of which said several mortal wounds and stabs, he the said Joseph White, then and there instantly died; and that he the said John Francis Knapp, then and there feloniously, wilfully, and of his malice aforethought, was present, aiding and abetting the said Richard Crowninshield junior, the felony and murder last aforesaid in manner and form last aforesaid, to do and commit; and so the jurors aforesaid, do say, that the said Richard Crowninshield junior, and the said John Francis Knapp, the aforesaid Joseph White, then and there in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the fifteenth day of June, in the year aforesaid, the said Richard Crowninshield junior, with force and arms, at Salem aforesaid, in the county aforesaid, as a felon of himself, feloniously, wilfully and of his malice aforethought, did kill and murder himself, so that he the said Richard Crowninshield junior, cannot now be further proceeded against or held to answer for the felony and murder last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Joseph Jenkins Knapp junior, and the said George Crowninshield, before the said felony, and murder in manner and form last aforesaid, was done and committed, to wit, on the second day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire, and procure the said Richard Crowninshield junior, and the said John Francis Knapp, the felony, and murder last aforesaid, in manner and form last aforesaid, to do and commit against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that a certain person (whose name to the jurors aforesaid is yet unknown) and John Francis Knapp aforesaid, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, in and upon Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said person unknown, with a certain deadly weapon called a bludgeon, and of the value of twenty cents, which he the said person unknown, in his right hand then and there had, and held, the aforesaid Joseph White, in and upon the left side of the forehead over the left temple of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead over the left temple of him the said Joseph White, one mortal wound of the length of three inches, and of the width and depth of two inches; of which said mortal wound he the said Joseph White then and there instantly died; and that he, the said John Francis Knapp, then and there feloniously, wilfully, and of his malice aforethought, was present aiding and abetting the said person, (to the said Jurors unknown,) the felony and murder last aforesaid to do and commit: and so the Jurors aforesaid, upon their oath aforesaid, do say, that the said person (to the Jurors aforesaid unknown,) and the said John Francis Knapp, the aforesaid Joseph White, in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the Statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Joseph Jenkins Knapp, junior, and the aforesaid George Crowninshield, before the felony and murder last aforesaid was done and committed, to wit, on the second day of April, in the year aforesaid, in the County aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire, and procure the said person (to the Jurors aforesaid unknown,) and the said John Francis Knapp, the felony and murder last aforesaid, in the manner and form last aforesaid, to do and commit, against the peace of the Commonwealth aforesaid, and contrary to the form of the Statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that a certain person (whose name to the Jurors aforesaid is yet unknown) and John Francis Knapp aforesaid, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the County aforesaid, in and upon Joseph White, in the peace of the said Commonwealth then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said person to the Jurors aforesaid unknown, with a certain deadly weapon called a dirk, of the value of fifty cents, which he, the said person to the Jurors aforesaid unknown, in his right hand then and there had and held, the aforesaid Joseph White, in and upon the left side of the body and in and to the heart of him, the said Joseph White, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, stab and wound, giving to the said Joseph White, then and there, with the dirk aforesaid, in and upon the left side of the body, and in and to the heart of him, the said Joseph White, several mortal wounds and stabs, each of the length of half an inch, and of the width of a quarter of an inch, and of the depth of six inches, of which said several mortal wounds and stabs, he the said Joseph White, then and there instantly died; and that he, the said John Francis Knapp, then and there, feloniously, wilfully, and of his malice aforethought, was present, aiding and abetting the said person, (to the said Jurors unknown,) the felony and murder last aforesaid, in manner and form last aforesaid, to do and commit. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said person, (to the Jurors aforesaid unknown,) and the said John Francis Knapp, then and there, in manner and form last aforesaid, the said Joseph White feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the Statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Joseph Jenkins Knapp, junior, and the said George Crowninshield, before the felony and murder last aforesaid, was done and committed, to wit: on the second day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the County aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire, and procure the said person, (to the said Jurors unknown,) and the said John Francis Knapp, the felony and murder last aforesaid, in manner and form last aforesaid, to do and commit, against the peace of the Commonwealth aforesaid, and contrary to the form of the Statute in such case made and provided.

A true Bill, EBENEZER SHILLABER, *Foreman.*  
PEREZ MORTON, *Attorney General.*

A true copy as on file—

Attr. JOHN PRINCE, *JUN. Cler.*

Upon which they were arraigned, and John Francis Knapp pleaded *Not Guilty.*

Before the others pleaded, *Mr. Dexter* suggested that they were indicted only as accessories, and therefore were not obliged to plead before the conviction of a principal.

THE COURT said they need not now plead.

The *Attorney General* then moved that Mr. WEBSTER might be permitted by the Court to take part in the cause on behalf of the government, stating briefly the reasons.

THE COURT said there could be no objection at all.

*Franklin Dexter* and *William H. Gardner, Esquires*, of Boston, were assigned as Counsel for the prisoner, at his request.

## Counsel for the Commonwealth—

Hon. *Perez Morton*, Attorney General;“ *Daniel Davis*, Solicitor General;“ *Daniel Webster*.

Joseph J. Knapp, jr. and George Crowninshield were then remanded.

*Mr. Dexter* said, before the trial proceeded, he wished to understand whether the *nolle prosequi* which had just been entered, could be struck off hereafter, and the prisoners tried upon that indictment?

PUTNAM J. Certainly that cannot be done.

*Mr. Hoar* inquired if the second indictment, read a few days since, had been *nol. pros'd.*

*Webster*. If there is any other indictment against the prisoner, it is matter of record, and Counsel may have access to it.

*Gardiner*. Before the jury is impanelled, I have a motion to make. When the prisoner was arraigned on the former indictment, application was made by his Counsel to have a list of the witnesses examined before the Grand Jury, endorsed upon the indictment, according to the English practice. It was answered by the Solicitor General, that it was our practice to return a list of the witnesses to the Clerk's Office; and he was understood to say that such a list would be returned, that the Counsel might know who were to be witnesses in each case. Such a list has not been furnished. I have a letter addressed to the Attorney and Solicitor General.

*Mr. Webster* objects to the reading of the letter.

THE COURT inquired of *Mr. Gardiner* what was the object of reading the letter.

*Gardiner*. We wish even at this late hour to be furnished with a list of the witnesses on the part of the Commonwealth. The prisoner has a right to know what witnesses are to be called against him. He may be obliged to send to a great distance for counter testimony, or to procure copies of records.

*Att'y General*. The law does not require a list to be furnished, except in treason. What we stated was, that we filed the names of *all* the witnesses in *all* the cases.

PUTNAM J. The Court did not so understand it. We understood that the Solicitor General promised a list of witnesses for each case separately. It is reasonable that the prisoner should be furnished with such a list. We think it his right.

The jury was then impanelled, as follows:—

Ephraim Annable,	Hamilton,	<i>sworn.</i>
John Ayer, 3d,	Haverhill,	<i>sworn.</i>
George Barker,	Marblehead,	peremptorily challenged.
Joseph Bartlett,	Newbury,	<i>sworn.</i>
Gilbert Barker,	Saugus,	peremptorily challenged.
Robert G. Bennett,	Beverly,	challenged for cause.
Nehemiah Berry,	Lynn,	peremptorily challenged.
Nathaniel Brown,	Salisbury,	<i>sworn.</i>
Issachar Burnham,	Essex,	peremptorily challenged.
Temple Cutler,	Lynn,	peremptorily challenged.
Samuel Dexter,	Gloucester,	challenged for cause.
Nathan Dodge,	Hamilton,	peremptorily challenged.
Joseph Farley,	Ipswich,	challenged for cause.
John Follansbee,	W. Newbury,	challenged for cause.
Samuel Foster,	Manchester,	<i>sworn.</i>
Charles Foster,	Andover,	<i>sworn.</i>
Peter Frye,	Andover,	challenged for cause.
Isaac Gallop,	Beverly,	challenged for cause.
Smith Gallop,	Wenham,	challenged for cause.
Downing Gentlee,	Wenham,	challenged for cause.

Samuel Gould,	Topsfield,	peremptorily challenged.
Joseph Hooper,	Manchester,	challenged for cause.
Joshua Howard,	Saugus,	<i>sworn.</i>
Jonathan Merrill,	Methuen,	peremptorily challenged.
John Merrill,	Salisbury,	<i>sworn.</i>
William Micklefield,	Salem,	<i>sworn.</i>
Sargent Moody,	Amesbury,	challenged for cause.
James Newhall,	Lynnfield,	peremptorily challenged.
Solomon Nelson,	Rowley,	<i>sworn.</i>
David E. Noyes,	W. Newbury,	peremptorily challenged.
John Page,	Danvers,	peremptorily challenged.
John P. Peabody,	Topsfield,	peremptorily challenged.
Isaac Pearson,	Haverhill,	peremptorily challenged.
Walter Piper,	Newburyport,	peremptorily challenged.
Artemas W. Perley,	Boxford,	peremptorily challenged.
William M. Rollins,	Bradford,	peremptorily challenged.
Andrew Russell,	Ipswich,	peremptorily challenged.
Ichabod B. Sargent,	Amesbury,	<i>sworn.</i>
William Smith,	Lynnfield,	peremptorily challenged.
Benjamin Stone,	Marblehead,	challenged for cause.
John Tenny,	Bradford,	challenged for cause.
Asa Todd,	Gloucester,	<i>sworn.</i>

SOLOMON NELSON, Esq. was appointed by the Court, Foreman of the Jury.

The Clerk then read the Indictment. [See page 14.]

The *Attorney General* then addressed the Jury, as follows:—

*Gentlemen of the Jury,*

Since the adjournment of the Court, the Counsel for the Government have procured the services of a gentleman pre-eminent at the Bar, to assist in the management of this Cause, and at my request, from his superior physical strength, as well as for his acknowledged supremacy in the powers of mind, he has taken the more arduous duty of closing the Cause, leaving to me the easier one of opening it.

All, who are to take a part on this interesting occasion, have a painful duty to perform. To see a young man, in the vigor of his days, brought to the Bar of his country, to answer for a crime, that implicates his life, however guilty he may appear, will necessarily create feelings of regret, if not of compassion in every beholder of the spectacle. But we ought not to forget, that a faithful discharge of our respective duties, is paramount to every other consideration. Public justice, as well as public safety, requires it at our hands; and so far as my duty requires, I will endeavor to discharge it with fidelity, and so far as yours extends, I feel confident that it will be discharged with candor, firmness, and impartiality.

The charge against the prisoner at the Bar, is for the murder of the late Mr. Joseph White—a murder of no ordinary character—a murder the most cold-blooded, unprovoked, and atrocious that has ever yet stained the annals of our Commonwealth, if not of any other country—a murder in the commission of which every personal and safety which the Law specially guaranties to the citizen in the asylum of his dwelling-house, and in the recess of his bed-chamber, has been outraged and violated.

It is not to be wondered at that such a crime should have produced an uncommon excitement among the citizens of the place of its atrocity, for who of them could have felt himself safe in retiring to his rest, unless the authors of this abominable murder were detected and punished. And it affords me satisfaction to say, that much credit is due to the Committee of Vigilance, chosen on the occasion, for their unwearied exertions to obtain that end. There is, however, one cause of blame which attaches to their laudable efforts, and that is their having suffered to be made pub-

lic so much of the results of their inquiries ; for nothing can be more improper and injurious to the cause of public justice, than editorial remarks on the relation of facts upon untried crimes : but it may be some apology for the Committee that the public mind had become so anxious and so full of inquietude, that it was nearly impossible to withhold most of the various facts, which their investigation had furnished ; and we all know the avidity with which editorial paragraphists wish to anticipate public information, upon every interesting occasion.

The perpetrators of this atrocious murder remained, for a long time, veiled in darkness and mystery, notwithstanding the efforts to detect them. The circumstances under which it appeared to have been committed were such as naturally created suspicions against the inmates of the family ; for it was found that nothing had been taken away, that no actual violence had been committed in entering the house, that the iron bar, with which the window where the assassin entered was usually fastened, was taken down and carefully placed against the side of the window. I say, these circumstances occasioned a necessary inference to be drawn, that some one, familiarly acquainted with the interior of the house, was either the murderer, or an abettor or accessory to him.

The first suspicion fell upon the son of Mrs. Beckford, who was the niece and housekeeper of the deceased ; but on inquiry it was found that he could have no concern in it, not having been in a situation to render it possible.

The breath of scandal, spread, no doubt, as since appears to have been his intention, by the prime instigator of the murder, to cover his own atrocity, imputed this deed of death to the favorite nephew and principal heir of the deceased, Mr. White ; but the filial and parental like affection which was known to subsist between this uncle and nephew, the acts of kindness and beneficence of the former, and the grateful attachment of the latter, and, with those who knew the man, the honor and integrity of his mind and heart, so often evinced by the voluntary suffrages of his fellow citizens of the county, soon dissipated this ephemeral slander, leaving, however, on his honorable mind an embittered regret, that any one, for a moment, could suppose him capable of so dark and horrid a crime.

Still, gentlemen, the perpetrators of this heinous offence continued wrapped in secrecy, for although he who did the deed was heretofore indicted for the murder, yet that indictment was found upon circumstantial evidence, and the testimony of a convict from the State Prison, as to those circumstances. But not a conjecture was whispered, that I ever heard, against the real authors of the murder, until a letter was handed to the Committee, under the signature of one GMAST, but really written by Palmer, whom you will have as a witness upon the stand, dated at Belfast, May 12th, postmarked May 13th, directed to J. J. Knapp, not having the addition of junior to it ; and, by that means, it was handed to the Committee by the father, for whom it was not intended. We are not now about to give any account of the contents of this letter, but only to say, that in consequence of it, and by some address of management by the Committee, Palmer was arrested at Belfast, as having some concern in the murder, or as having knowledge of the persons who were the perpetrators, and the two Knapps were arrested, charged with being deeply implicated in the fact.

Suffer me here, gentlemen, to pause, and make a moral reflection. This letter of Palmer, and the manner of its falling into the hands of the Committee, I consider as one of those mysterious ways of divine Providence, which lead to the detection of secret murderers ; and it may be remarked, as a general truth, that it seems to be the will of Heaven, conformably to its own law, " whose sheddeth man's blood, by man shall his blood be shed," that the secret murderer should not escape detection, and punishment even from a human tribunal, whatever may be his retribution

in the world to come. And not unapt is the language of the great delineator of the human passions, used on a similar occasion, put into the mouth of his Hamlet, whose father had been secretly murdered, and who was, by an ingenious device, endeavoring to detect the murderers, when he says, "Murder, though it have no tongue, will speak with most miraculous organ"—and in that case it did speak, through the stings and goads of conscience of the Queen, his mother.

Gentlemen, a few words more, by way of preliminary, and before I introduce the evidence, as it respects my own conduct in this case, in my official capacity.

After the two Knapps were arrested, at the request of several respectable citizens of Salem, I authorized in writing the Rev. Mr. Colman to receive the free and voluntary disclosures of any one of the individuals charged, without naming any one; and giving him authority to say that on condition of his disclosing the whole truth and nothing but the truth respecting the murder, I would call him as a witness on the trial, and that being a witness, he would have the implied pledge of the Government, not to be prosecuted for that offence. In consequence of this authority, Mr. Colman received the voluntary disclosure of J. J. Knapp, jr. in writing: accordingly, to redeem the pledge on the part of the Government, I have called him before the Grand Jury, at this term, as a witness, to give evidence as he has disclosed: but, by the advice of his Counsel, he refused to testify there, saying he was not bound to criminate himself; but as the inquiry before the Grand Jury may not be considered as calling him as a witness *upon the trial*, I shall, in the course of the examination of the evidence, again call him as a witness, and if he again refuses to testify, every one will acknowledge, that the pledge of the Government will be completely redeemed, and his promised protection will be forfeited, and he must stand on his own original responsibility.

The Counsel for the Government do not confidently expect that the evidence which will be given you, will justify the belief that the prisoner at the bar actually gave the blow on the head, or the stabs in the heart of the deceased, for he, who, it will appear, did the deed, wretched man, like his great prototype, who betrayed the Saviour of the world for thirty pieces of silver, smitten with the stings of conscience, has gone, and hanged himself; though less scrupulous than Judas, he has never returned the wages of his iniquity.

It is, however, altogether immaterial, whether the prisoner at the Bar, actually gave the mortal blows, provided he was present, aiding and abetting the person, who inflicted them. He is charged both ways.

And this naturally brings us to the consideration of the law of Abettments.

By the very ancient common law, before the reign of Henry 4th, of England, he alone who gave the stroke was considered as the *principal* offender, and those who stood by in aid and assistance of him who actually committed the felony, were held to be only accessories; and these aiders and abettors at the time of the felony, had the same right, that accessories before the fact now have, that of not being tried till he that struck the blow should be tried and convicted; so that if he who actually committed the murder, died before he was tried and convicted, those who were present, aiding and assisting, could never be tried, and of course escaped punishment. But this principle was found to be so repugnant to the common understanding of mankind, that in the time of Henry 4th, all the judges of both benches concurred in altering that principle of the ancient common law, and settled it more conformably to reason and morality, common sense and public justice, by making the abettor at the fact a principal.

Had these judges advanced one step further towards common sense, and decided, that, when he that gave the blow, and he that abetted him had died, or was otherwise not capable of being tried and convicted, the

necessary before the fact, (the felony or murder being proved,) should be amenable to justice, as for a substantial offence, they would have left their common law much more perfect on this subject than it now is; for in moral turpitude the guilt of him who hires the assassin to do the deed, and absents himself, is of a darker grade, in my apprehension, than his who has the courage to do it.

The celebrated Mr. Peel, in the bill which he brought before the House of Commons, contemplating amendments or alterations of some of the rules of the common law, makes this very case one of the amendments, and constitutes the offence of an accessory before the fact in felony a substantive crime, and triable independently of the principal, under certain conditions.

Whether our statute against murder will not be ruled by this Court to have altered the common law in this respect, as was suggested to be possible in the opening Charge of our lamented Chief Justice at this term, whose afflicting death is so deeply felt, will be tested, if it should ever become necessary in these trials. Permit me here to read his lucid opinion on this point. [See p.p. 5. 6.]

But at present we are considering the case under the principles of the common law, as it now stands, and from the time of Henry 4th, to the present day, the common law is settled, that, as Lord Hale observes,\* "all that are present, aiding and assisting, are equally principals with him that gave the stroke, whereof the party died; for though one gave the stroke, yet in interpretation of law, it is the stroke of every person that was present, aiding and assisting, and though they are called principals in the second degree, yet they are principals; and therefore if there be an indictment of murder against A., that he feloniously struck B., whereof he died, and that C. and D. were present, aiding and abetting to A. in the felony and murder aforesaid, and A. appears not, but C. and D. appear, they shall be arraigned, and receive their judgment, if convict, though A. neither appears, nor be outlawed. And he further says, if A. be indicted as having given the mortal stroke, and B. and C. as present, aiding and assisting, and upon the evidence it appears that B. gave the stroke, and A. and C. were only aiding and assisting, it maintains the indictment, judgment shall be given against them all, for it is only a circumstantial variance, for it is the stroke of all that were present, aiding and abetting; he cites Mackally's case.

I will read also from 1 East. P. C. 350, 351, to the same point:

"In appeal where several are present at the fact, and one only actually does it, and the others abet him, the Plaintiff may either elect to suppose in his declaration that all did the fact, or shew the special matter. For in these cases all the parties are principals, and the blow of one is in law the blow of all. For which reason an indictment that A. gave the mortal blow, and B., C., and D. were present and abetting, is sustained by evidence, that B. gave the blow, and A., C., and D. were present and abetting. Upon the like indictment, evidence that E., though not named therein, gave the blow, and that A., B., C., and D. were present and abetting, would be sufficient; or even that a person unknown gave the blow." And 1 Hale 440.

You perceive, therefore, Gentleman, that it is altogether immaterial in law, whether the prisoner now on trial gave the mortal blow, or was only aiding and abetting to him who gave it—and that the indictment may charge him either way.

There are three kinds of abetments to felonies.—The first is an abetment at the time the felony is committed, that is, being present, aiding, and assisting or consenting to him who actually commits the felony; and this constitutes a principal offender.

The second is an abetment before the felony is committed, by counsel-

\* 1. Hale, P. C. 437.

ling, hiring and procuring the felony to be done, and being absent when it is committed, and this constitutes an *accessary before the fact*.

The *third* is an abetment after the felony is committed, and that is harboring, concealing or maintaining the principal offenders or their accessaries before the fact; and this constitutes an *accessary after the fact*.

The prisoner at the bar stands indicted of the first kind of these abetments, that is as a *principal offender*, and if he be not convicted, by the common law as it now stands in England, the accessaries before the fact cannot be tried, and must escape punishment.

It is therefore necessary to consider what, in law, constitutes an abettor at the time the murder is committed; and according to Lord Hale, to make an abettor to a murder a principal in the felony, two things are requisite.

The *first* is, he must be *present*.

The *second* is, he must be *aiding and abetting*. I will read you the authorities on both these points. As to the *first*, being present—

“As to the *first*: if divers persons come to make an affray, &c. and are of the same party, and come into the same house, but are in several rooms of the same house, and one be *killed* in one of the rooms, those that are of that party, and that came for that purpose, though in other rooms of the same house, shall be said to be present.—*Dalt. cap. 93. p. 241.*

The Lord *Dacre* and divers others came to steal deer in the park of one *Pelham*. *Rayden*, one of the company, killed the keeper in the park, the lord *Dacre* and the rest of the company being in other parts of the park, it was ruled, that it was murder in them all, and they died for it.—*Crompt. 25. a. Dalt. ubi supra, 34 H. 8. B. Coron. 172.*

The like in case of burglary: though some stood at the lane's end or field-gate to watch if any came to disturb them, *Co. P. C. p. 64. II H. 4. 13. b.* yet they are said to be burglars, because present, aiding and assisting to the burglary.

So if A. being present, commands B. to kill C., and he doth it, both are principals.—*13 H. 7. 10. a.*

If many be present, and one only gives the stroke, whereof the party dies, they are all principals, if they came for that purpose.—*21 E. 4. 71. a.*—*1 Lord Hale, 439. 4 Hawk. 201, 202.*

As to the *second* point:—

“And consonant to this is *Mr. Dalton, p. 241*, in these words: “Note also, that if divers persons come in one company, to do any unlawful thing, as to kill, rob, or beat a man, or to commit a riot, or to do any other trespass, and one of them, in doing thereof, kills a man, this shall be adjudged murder in them all that are present, of that party, abetting him, and consenting to the act, or ready to aid him, although they did but look on.”—*1 Hale, 441.*

“When the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict actual immediate presence, such a presence as would make him an eye or ear-witness of what passeth.

“Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him; some to commit the fact, others to watch at proper distances and stations, to prevent a surprize, or to favour, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law present at it. For it was made a common cause with them, each man operated in his station at one and the same instant towards the same common end; and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprize.”—*Foster, 349.*

Which is, if he be *consenting* to the felony, or *ready to aid* him who does



it, although he does but look on. • If they have the same object in view, if they came for the same purpose. It is the *intention of the mind* therefore, that constitutes the abettor to a felony, if he be present in contemplation of law, though he do nothing.

And now gentlemen, let us hearken to the testimony ; and the Government are first bound to prove the *corpus delicti*, that is, that the deceased Mr. White came to his death by the hand of external violence.

Having proved the death by the hand of external violence, we shall then proceed to prove to you that the death was effected by a wicked conspiracy and combination of individuals, of which the prisoner at the bar was one, to destroy the life of the deceased, and to this point, we shall offer Joseph Jenkins Knapp, jr., to redeem the pledge of the Government given for his protection, on condition of his testifying the whole truth and nothing but the truth on this trial. He refuses to testify. And now Gentlemen, every one must be satisfied that the pledge of the Government, given for his protection, is fully redeemed ; he has now forfeited that proffered protection, and stands accused as an accessory before the fact to this murder—he has an unquestionable right to take the stand he has, for the Constitution of the Commonwealth provides, that *no subject shall be compelled to accuse, or furnish evidence against himself*.

As we cannot prove this vile conspiracy and combination to murder the deceased by the disclosure of this accomplice in the crime, by the blessing of God we will prove it by other testimony in the case.

And, if in the opinion of the Court we shall be able to shew that such a conspiracy existed, another principle of law will be relied on, that when a conspiracy to do an unlawful act is proved, the acts of any one of the conspirators, done in effecting the object of their combination may be given in evidence against any other of the conspirators. Phillips on Evidence, [76.]

**ATTORNEY GENERAL.** After proving the murder, I shall move that J. J. Knapp, jr. be brought into Court as a witness.

**PUTNAM, J.** I have no objection. He may be sent for while the witnesses to the facts of the murder are examined.

**Mr. GARDINER.** Something was said in opening, by the Attorney General, about a *view*. The Counsel for the prisoners wish for such a view by the Jury, of Mr. White's house and the premises.

**PUTNAM, J.** We once refused it in Boston, and we see no reason for granting it now. There are many practical inconveniences attending it. We know not what impressions and influences the Jury may receive while out of doors.

The Court then ordered J. J. Knapp, jr. to be brought in, but the Counsel for the prisoners objecting, he was ordered to be kept in some convenient place until wanted.

*Benjamin White* was then sworn, and testified : He was a servant of Capt. White. On Wednesday morning, 7th of April, about 6 o'clock, I came down into the kitchen, and on opening the shutters of the eastern window, saw the back window of the North Eastern room open, and a plank put up to the window. I went into the front room, but saw no appearance of any one having been there. I then went to Miss Kimball's (the maid servant's) room, and told her, and then went into Mr. White's chamber at the back door, and saw that his door, opening into the front entry, was open, and that he was murdered. I then went down, and told Miss Kimball that Mr. White was gone. His face, when I first saw him, was very pale—the bed-clothes were turned down. I think I saw some blood upon the side of the bed, or on his flannel. I then went to Mr. Mansfield's door, who lived opposite, and knocked—then to Mr. Deland's, then to Dr. Johnson's, and then to Mr. Stephen White's. About three weeks before the murder, Stephen Stratton came into the yard, between 10 and 11 o'clock in the evening, and asked me if I knew who that man was—

Mr. Dexter objected to this conversation, and the Court said it was not evidence.

On the afternoon before the murder, I was at the farm, in Beverly, with Mr. White—we were there several hours; came home a little before night, about 5 o'clock.

The window which I found open, was up 21 or 22 inches—the shutter, which opened very hard, was open some way, and it was sometimes left open two or three days together—the window was fastened by a screw, and the shutter by a bar. I found this bar standing by the right side of the window.

Mrs. Beckford is a niece of Capt. White, and lived with him. She is a middle aged lady. Miss Kimball, a domestic, and myself, were all who lived in the house with Mr. White—his chamber was over the South-West parlor, (the keeping room)—the house faces South, on Essex-street, is three stories high—Mr. White's chamber has two doors, one opening from the end entry, and the other from the front entry—it has also four windows, two Southern, one Western, and one Northern looking into the yard.

Mr Webster then called J. P. Saunders, Esq. the Surveyor, who swore that the plans of the house and premises were correct. Mr. Webster then explained these to the Jury.

(Witness continued.) I was at the kitchen window when I saw the back parlor window up—that room was very little used. The rooms commonly used were the S. W. parlor—Mr. W's chamber over that—the maid's over Mr. W's. Mrs. Beckford's chamber over the kitchen, and mine over Mrs. B's. The chambers on the eastern side were unoccupied, except when strangers were at the house. Mrs. B. was at Wenham on the night of the murder—she went away about 12 o'clock that day. The window which was opened, and at which the plank was put, was the one nearest the back door. Mr. W. went to bed that night rather later than usual, about 20 minutes before 10—his usual hour was about 9. He was 82 years old and in some measure deaf—the left ear was deafier than the right; he has often told me—

Dexter objects to any thing that Mr. White said, as merely hearsay.

Webster. Our object is to prove the habits of Mr. White, from the observation of the witness, and from what he had heard Mr. White say.

By Court. What he said is not admissible.

Witness resumed. The head of his bed was against the Eastern wall of the chamber, near the door which opened into the front entry, so that any one entering that door would come behind Mr. W. if he was lying upon his right side.

Mrs. Beckford's furniture was in the back parlor, which was entered. In Capt. W's chamber there are shutters to all, and blinds to the front and western windows—I did not notice the state of the windows that morning, but the blinds were open and the room was light enough to see when I entered.

I knew that Mrs. B. was going to Wenham, for she had spoken of it 2 or 3 days before. I went to bed the night of the murder immediately after Capt. White went. It was about a quarter before ten o'clock. I went without a light. I left Miss Kimball raking up the fire, and as I went up I looked into the keeping parlor at the clock. There is an avenue and two doors on the west end of the House, and to get at the opened window, one must pass along that end, through the avenue, through a garden gate, round the buildings and up the garden to it. There are no blinds to my chamber—there is a shutter at my east window but none at the west.

Cross-Examination.—Mr. White went from the kitchen to his sitting room, and through his room to bed. After he had retired I knew what o'clock it was, because I looked at the clock. No one called at the house on the evening previous to the murder—do not know that Mr. W. sat

up late expecting any one. The street door was usually kept fastened all the evening, except the latter part of it, for when Mr. W. came in he used to leave it unfastened till he went to bed. The relatives, Mr. S. White's family and Mrs. Beckford's friends, passed in and out without knocking—I saw Joseph Knapp there once or twice within two months before the murder. Frank Knapp very seldom came there. Mr. W. never kept his lamp burning all night. It was not Capt. White's habit to keep a light or fire in his room during the night—there were shutters to all his windows, and to the north window shutter there is a bar, and this is the only one which has a bar. The weather, when I went to bed, was over-cast. The shovel and tongs had been removed from the chamber and there was no poker there—there was one in the room below. There is nothing between my chamber and Capt. W.'s but an entry and stair case—I heard no noise during the night—I don't recollect telling any person that some gentlemen were there or that any one was expected on the day of the murder—I don't know who had been there during the day—did not hear or see Mr. W. after he went up stairs—Miss Kimball had nearly raked up the fire when I went up—I did not hear her go to bed nor see a light in her room when I went up—I saw Frank Knapp a day or two after the murder—he sat up with the body and was in the house some time every day—I sat up with him one night and don't remember, who else ever sat up with him—he assisted at the funeral. There was nothing missing from the house after the murder, and there was money in Mr. W.'s chamber, about a week before the murder. I found the window which was entered fastened—knew that it was so by putting my finger over and feeling the screw—it had not been unbarred to my knowledge, before the murder.

*Re-examined by Government.*—I had seen Jos. Knapp there within 2 or 3 weeks previous to the murder—he usually came when Mr. White was not at home, about 4 in the afternoon—he married a daughter of Mrs. Beckford—he had free access to all the rooms when the family were out—we usually kept fastened both front and back doors—Joseph came into both

*Webster.* Before any other witness is called, I wish to understand the rule of Court about the exclusion of witnesses from the Court room, and that it may operate equally upon both parties. (The Court had excluded Joseph J. Knapp, jr. as above.) Such exclusion is I am aware the English practice, but not I believe that of our Courts.

*Dexter.* I must insist that all the witnesses be excluded.

*By Court.* All who have been summoned and expect to testify must not be present during the examination of any witnesses. We consider it the right of the prisoners.

*Lydia Kimball (a domestic) was then sworn.* I did not hear any noise during the night—the man came to my door and told me that some one had been into the house, for that the back window was up; I went down into the front room to see if any thing had been stolen; told him to go up and tell Mr White—he came down and told me to be calm—that Mr W. had gone to the eternal world—he then went to call the neighbors—I did not see Mr W. till I was called before the Jury of Inquest. Mrs. Beckford left the house on Tuesday, the day previous to the murder, about 1-2 past 11 o'clock—she told me, a day or two before, that she was going to Wenhams—Mrs Knapp came down for her. I went to bed that night rather before 10. There are blinds and shutters to my room; the blind on the west side was shut, but all the others, and all the shutters, were open.—In Capt. W.'s room all the shutters were open except one half of the one nearest his bed, which was a front window—that day when I made the bed all the blinds were open, except the western ones, and I have not seen them since. It was Mr W.'s usual habit to have all the shutters open but the half one I have mentioned. He usually went to bed about 9 1-2. I lived with him more than 16 years. I could generally tell when he was

awake, if I myself was so, by a kind of cough or *hem* which he had when awake, which was usually in the latter part of the night—I don't recollect hearing him ever early in the night—I had nothing to do with the room, which was entered—it was Mrs B's, and not much used—the chambers over that side of the house were unoccupied. Capt. W. was deaf in his left ear.

*Cross-examined.*—I think Capt. White went to bed a little before ten, on the night of the murder—the northern window of his chamber was shut and barred in the winter and opened in the spring—I can't say exactly what time it was unbarred this spring—my room is over Mr White's and has the same number of doors and windows—no one called at the house that day after one o'clock—the gentleman who called then did not say he should call again. Capt. W. did not lock his door usually, but there was a key in it—I generally heard him shut it—I did that night—he usually put his candle on the table between the windows.

*Dr. Samuel Johnson*, called and sworn.

I was called about 6 o'clock, to Capt. White's—was told that he was murdered. I went, and entered with Mr. Stephen White. I went to Capt. White's chamber, and found him lying on his right side, or nearly so, and nearly diagonally to the bed. There was a mark of considerable violence on his left temple. I noticed that the bed clothes were laid slantwise, square across the body, and diagonally to the bed. He lay with his feet towards the left lower post of the bed, and his head towards the right head post. His head was towards the closet, and on the right side, on the pillow; on throwing off the bed clothes, I saw that the back of his left hand was under his left hip, and there was considerable blood on the bed; he also had bled a little from the nose. Nothing further was then done. I told Mr. Stephen White that an inquest should be called. In presence of the Coroner's Jury, the shirt was stripped off, and the body exposed. We found five stabs in the region of the heart, three in front of the left pap, and five others, still farther back, as though the arm had been lifted up, and the instrument struck underneath it. I examined a number of the stabs with a probe, and found that it would penetrate from one to three inches. It was my belief at the time, that either the wound on the head, or the stabs, would have caused death. The wound on the forehead was not very perceptible, except to touch. Upon feeling I could perceive that the bone was fractured. I was convinced at the time, that it was sufficient to cause death. Afterwards, a more minute examination was made; the scalp was removed, and we found a fracture of an oval shape, in the temple, 3 3/4 inches long, and 2 1/2 inches broad. A portion of the temple was broken in, some fractures extending upwards, towards the back of the head, and another down, towards the face. Upon opening the chest, it was found that two of the wounds had penetrated the walls of the heart, without reaching the cavity—I have no doubt that either would have produced death. The instrument which gave the blow on the head was probably some smooth instrument, like a loaded cane, that would give a heavy blow, without breaking the skin, and the instrument used in giving the wounds in the side, was probably a dirk. On the second examination, we found thirteen stabs, six in front, and seven farther back, about three inches from the others, near to the spine. We found three of the ribs fractured, most probably done by the hilt of the dirk. There was no appearance of a struggle, it appeared a case of instant death. I was desired by Mr. Stephen White, to look on and see the iron chest and trunk examined, and also the foot print and window. The window was open. I saw two foot prints, both directed towards the wall of the house. There was a plank set up, diagonally, the bottom of it about two feet from the sill. There were no marks of wet feet, but a little dampness on the floor, where it had rained in.

*Cross Examined.* The inquest was holden about an hour after I went to the house. The second examination took place 36 hours after death.

The stabs were grouped; one group of five was within the compass of three inches. On the first examination, the wound on the head was not very perceptible, except to the touch. On the second examination, it was more prominent; there then appeared to be more air in the *cellular membrane*.

The foot prints, I believed at the time, were made by the person when he put up the plank; they were not near together, and were those of a right and left foot. There was no appearance of more than one weapon having been used in giving the stabs. The front wounds gaped more than the others, and were 3-4 of an inch wide. The first examination, (that before the Jury of Inquest was held,) was hasty. The head was then lying on its right side, partially, but not fully, and a little back. I suppose the arm was drawn back when the stabs were given, because it covered them when I first saw him. The body was nearly, but not quite, cold, and there was no pulse. The human body retains its heat for some time, if covered up. Mr. White was an old man, but he was rather fleshy. The blow on the head, by checking the circulation, probably prevented the loss of blood. From all the circumstances, my first opinion was, that it had been done three or four hours. There was, however, nothing to prevent its having been done six or eight hours. My first impression was that he had lost more blood than we afterwards found he had.

The Attorney General then called Joseph J. Knapp, Jr. as a witness, and inquired of him, if he was willing to be sworn. He answered in the negative, and the Attorney General was proceeding to inquire the reason, which was objected to by Mr. Dexter.

THE COURT said he was not obliged to state his reasons for refusing. It is only necessary that this should be understood, so that there may be no difficulty hereafter. The Government say they have pledged themselves not to proceed against him if he would testify; he does not testify, and now that pledge is recalled.

*Webster.* We wish to proceed according to the usual course. I should suppose that he should be sworn, and then he may answer that he cannot testify without criminating himself.

*Dexter.* He does not complain of the course pursued.

*Webster.* His counsel say that he can have no right to complain, and the Government are content.

*Dexter.* It was stated by the Attorney General, on his opening, that Knapp would refuse to testify, in pursuance of advice of counsel. I feel it my duty to state distinctly that I have never given such advice.

*Gardiner.* And I have never given such advice.

*Attorney General.* But other counsel have had access to the prisoner.

*Dexter.* The only other counsel who has had access to him, is ready to make the same statement.

*Benjamin Leighton, sworn.*

I have lived with Mr. Davis, at Wenham, at the house where Mrs. Beckford and Joseph J. Knapp, jr's. family live, since the 6th of October last. Knapp's family came there to live a few days after I went. About a week before Capt. White was murdered, I went down to the lower end of the avenue, got over the wall, and sat down by the side of the gate, that is across the avenue. I sat a few minutes, and then heard men talking the other side of the wall. I looked round through the slats of the gate, and saw the two Knapps coming down the avenue. When they came near the gate, Joseph said, "When did you see Dick?" Frank said, "I saw him this morning." Joseph said, "When is he going to kill the old man?" Frank answered, "I don't know." Joseph said, "if he does not kill him soon, I will not pay him;"—then they turned back, and I did not hear any thing more. This was about two o'clock in the afternoon; I had been to dinner. It was the Friday before Capt. White was murdered, I think;—it was within the week previous to the murder. They

did not know that I was there ; I was waiting for Mr. Davis, to go to work.

I shall be 18 years old the 30th of next December. I am under no mistake about the conversation ; I am sure of the persons. Jos. J. Knapp, jr. has lived in the house where I lived. John Francis Knapp came to the house frequently.

Frank came up to Wenham one evening, after the murder, in a chaise, about 9 o'clock ; this was about a fortnight or three weeks after the murder. I believe Mrs. Beckford was living there then. There was a gentleman in the chaise at the door ; I did not know him, but he was a slim man, not so thick as Frank Knapp. I went to the door when the chaise drove up—Frank got out and went in, and asked if his brother Joseph was at home. Joseph Beckford said he was. Joseph Knapp met Frank at the inner door, and they went into the room together, and shut the door. They were together, I should think, an hour ; nobody was in the room with them. Frank Knapp knocked ; I went to see who was at the door. The other person sat in the chaise all the time ; they did not give the horse any thing ; they both drove away together, down the avenue ; I could not tell which way they went.

*Cross Examined.*

The house is about fifty rods from the road ; I heard the conversation near the gate to the pasture, at the lower end of the avenue. I had just come from dinner ; Mr. Davis was in the house at the time. Joseph and Frank were standing by the gate, near the house, as I passed down the avenue—when I got down the avenue, they came down. I was sitting under the wall, to wait for Mr. Davis, and to take a little nooning, I mean a little rest. I passed them and went down the avenue, went through the gate, and hasped it, and sat down behind the wall. I did not say any thing to Mr. Davis about the conversation I had heard. I have been called upon to tell what I knew about it, by Mr. Waters and another gentleman I did not know ; they sent for me to come to Mr. Waters's office ; I told them I could not recollect, at that time, that I had ever told any thing about it. I did not tell them I knew nothing about it. I was in his office in the forenoon and afternoon, and staid at the Lafayette Coffee House at noon.

The gate, where I left the Knapps standing, is in front of the house, and opens into the avenue. I went down the avenue towards the pastures, not towards the road, went out of the avenue over the wall, by the gate. This gate could not be seen from the place where the Knapps stood. The house makes one side of the avenue, which is narrower at that place. The gate, at which the Knapps were standing, is about forty feet from the house. The gate, where I got over, is 50 rods from the house. They could not see me when I got over the wall ; the house hides the place, and stands out into the avenue, or the fence retreats. I know they could not see me get over the wall, because I have tried since. I tried, because if they did see me, and knew I heard them, I was afraid they would kill me.

I first saw Mr. Waters a week ago last Thursday : I was summoned by a man from Lynn, and carried to Mr. Waters's office. They asked me if I recollected telling Mr. Starrett any thing. I told them I did not. I believe I did not tell them I did not know any thing about it. I went to Mr. Waters's office about 11 o'clock, and staid till 2. Mr. Starrett was there, and they talked with him. They asked me if I knew any thing about Frank Knapp. I told them I did not. I was asked if Richard Crowninshield had been at the farm, and I said I did not know him. They asked me if I had told Starrett any thing about it, and I told them I did not recollect telling him any thing. I did not then remember that I had told Starrett any thing about it, and I told them so. They bothered and frightened me talking to me, and I could not remember. Mr. Starrett told Mr. Waters that I had told him something, but I could not recollect

it, and told them so. They said Mr. Starrett and Dr. Kilham were in the shop when I said so. I told Mr. Waters I did not recollect it, but if he would come up the next day, I would tell him all that I knew. I then remembered what I have testified, but did not calculate to tell any thing about it. I went to Mr. Waters's office again in the afternoon, about 5 o'clock. From 2 to 5 I was at the Tavern. Mr. Starrett and Mr. Waters were at the office in the afternoon. Mr. Starrett asked me if I could not recollect what I said in his shop. I told him I could not. They said Dr. Kilham and Mr. Starrett were in the shop, and heard what I said. They did not question me any further. I staid there till sun about an hour high; I was there an hour or more. They did not tell me any thing would be done to me, if I did not tell what I knew, but said I must come to Court.

I told Starrett, because I spoke before I thought. I saw Mr. Waters again last Saturday, at Lummus's tavern, in Wenham. He came there with Mr. Choate and Mr. Treadwell. They wanted me to tell what I knew. I told them I had been down to Salem, but could not recollect then; I was in a strange place, and frightened. They talked to me so, that I could not recollect. Then I recollected what I had told Starrett, and told them the same story I have told to day. I believe they asked me but once. I told them at once what I knew. They did not tell me they had a warrant against me. Mr. Davis afterwards told me they would carry me off, if I did not tell all I knew; they did not threaten me.

The day I heard the conversation between the Knapps, I was going to splitting rocks. They were on one side of the wall and I on the other. I looked round beyond the wall, and through the slats of the gate. I did not wish they should not see me. They were half way between the house and the gate when I heard their voices, and looked round to see who they were. They walked down to within three or four feet of the wall. I heard nothing else, that I could understand. They stood by the wall two or three minutes, and then went back. It was after they stopped that I heard what I have testified. I did not tell the conversation to any body before the murder. I could not think, till after the murder, what it was about. I staid by the wall till the Knapps had passed out of sight. Mr. Davis came down after I had gone to work.

On the evening when Frank came to Wenham, with another person, it was dark, and the chaise top was up. I could see that the man, who sat in the chaise, was a slim man.

*Re-Examined.*—On the day after the murder, I went into Starrett's shop, and he said, "what is the news about the murder?" I said, they think I don't know any thing about it, but I know a little more than they think I do. I spoke before I thought. I was unwilling to say any thing more because if they got hold of this, I was afraid they would kill me. Frank used to be round me, with his dirk, and pricking me with it—he did this more than once, and other persons saw it. Thomas Hart saw it. The first time I told the conversation to any body, it was to Hart, and it was not long ago. I next told it to Mr. Waters. I told Starrett I overheard something, but did not tell him what. This was when going home from Salem; before this, I had told Hart, down in the field. No threat has been used to make me testify. I was frightened when I was carried to Mr. Waters's office, for I was taken suddenly, and from the field—they carried me by the Court House, but the Grand Jury had been dismissed. The officer read the summons to me when he took me.

*Cross Examined again.*—The first time I saw Francis Knapp have a dirk, was after he was attacked at Wenham Pond, after the murder. Starrett did not ask me what I knew, did not ask me what I had overheard. I am afraid now, if the Knapps get clear, they will kill me. I heard there was a reward offered. I told Mr. Starrett before I heard of the reward, but did not tell the conversation till afterwards. I did not know what the reward was.

*Rev. Henry Colman, sworn.*

I had no personal acquaintance with the prisoner until the 28th of May, when he was examined before Justice Savage. On the afternoon of that day, I went to his cell with his brother, Phippen Knapp, at his (Phippen's) request. When we went in, Phippen said, "Well, Frank, Joseph has determined to make a confession, and we want your consent." I am not able to give the reply of the prisoner, in his precise words, but the effect was, that he thought it hard, or not fair, that Joseph should have the advantage of making a confession, since the thing was done for his benefit, or advantage. I now give his words, as nearly as I can recollect them. He said, "I told Joseph, when he proposed it, that it was a silly business, and would only get us into difficulty." Phippen, as I supposed, to reconcile Frank to Joseph's confession, told him, that if Joseph was convicted, there would be no chance for him, (that is for Joseph,) but if he (Frank) was convicted, he might have some chance for procuring a pardon. He then appealed to me, and asked me if I did not think so? I told him "I did not know, I was unwilling to hold out any improper encouragement."

*Dexter.* We object to any continuation of this confession. It is now in evidence, that Phippen, with a view to reconcile Frank to Joseph's confession, told him, that if he were convicted, he might have a chance of pardon. This was a direct inducement to a confession.

THE COURT said they would hear the Counsel for the Government.

*Webster.* It appears to me exceedingly plain, that his confession is admissible. It is a general principle of law, that the confessions of a party are evidence against him, except in those cases where they have been obtained by improper influence. There is no doubt about the rule, the difficulty is in the application. We propose to prove the confession of the prisoner. Against this, generally, there can be no objection. Then, if this case be within the exception to the rule, it is for the other side to shew it. We deny it, altogether. We say the only exception is, when a confession is obtained by menace, or hope of favor. In this case, there is no proof of any encouragement, or any threat. There is no evidence to shew that the confession was not entirely voluntary. This person, Phippen Knapp, went to the cell of the prisoner, and told him that his brother, who was confined upon the same charge, had confessed, and asked his assent to that confession. The prisoner knew of no confession, whether it would affect him or not. His brother (Phippen) thought it expedient to ask his assent to his brother's confession. There is no other fact in the case. No confession was asked from him; but in the course of the conversation, he stated certain truths. The Government is entitled the benefit of those truths, unless he protects himself by some known rule of law.

The books tell us, that to exclude confessions, it must be shewn that they were made under the influence of fear, or the hope of reward. What is the evidence in this case? Did they say to the prisoner, it would be better for him to assent to Joseph's confession? Just the reverse. It would be worse for him, but *on the whole*, it would be better. There was no intimation that it would be better for him to assent. What promise or encouragement was there? Not the least, but just the reverse.

What we now propose to prove, is the confession of the prisoner himself. It is not enough that he thought it would be better for him to confess. That is no objection to a confession. Every body thinks it would be better to confess, or confession would never be made. The question is, whether the confession was the spontaneous operation of his own mind; if so, then it was voluntary, and we must have it. The Court can only look to what was held out to him. Any other course would be to leave fact and follow hypothesis.

The object of the conversation was to reconcile him to a worse state of things. But this is not the strong view of the case. The prisoner was under the influence of no hope, under the influence of no fear, under the



influence of no persuasion. If there ever was a voluntary confession, on the face of the earth, this was one.

*Gardiner.* We contend that this confession comes within the exception to the rule. The general rule is, that confessions are evidence, unless they are obtained by means of improper influence. If there be any influence, however slight, the confession cannot be used.

This is, at best, the weakest kind of evidence. The idea is absurd, that a person, charged with a capital crime, will confess, unless some influence is used. And it is laid down by Blackstone, and by Foster, and other writers, that it is the weakest kind of evidence; the most liable of all to be mistaken. The witness, in this case, cannot give the words of the prisoner, except in part. His testimony consists partly of the words of the prisoner, and partly of his own inferences.

We do not differ in principle, but in fact. Frank was told, if Joseph confessed, there would be more chance for his (Frank's) procuring a pardon. It is not necessary for us to shew the degree of influence used. (Cites Foster, 343. Phill. Ev. 86. 2 Stark. 48. Phill. 80 and note. 1 Leach C. L. 325 and note.)

*Dexter.* In books on evidence, confessions are sometimes called the weakest evidence, and they are sometimes stated to be the strongest.— One reason why they are called the weakest kind of evidence, is because the witness cannot give the precise words, but only their effect. Such a confession is no confession at all. To bind the prisoner, we must have his words.

If this confession goes to anything it must be to the guilt of the prisoner, if it was a mere consent to Joseph's confession, then it is not evidence. The natural import of the words, as they came from the witness, was, if Joseph is convicted, he will have no chance; if you confess and are convicted, there will be a hope of pardon. This holds out a direct inducement to confess. This is the natural import of the words. The legal effect may be different, but the prisoner is not a lawyer.

*Webster,* in reply. The import of the words was not such as has been argued. But it was saying Joseph has no hope but in confession, you have some. The thing to be avoided in Joseph's case was a trial, and he was by disclosure to avoid that trial. It was asking him to consent to Joseph's confession as something perilous for him, but the only salvation for his brother. I have a right to ask for the confession until it is proved, that some threat or some promise was made. I propose to ask the witness for Frank's confession of facts within his own knowledge, wholly unconnected with Joseph's confession. And unless he was told, that it would be better for him to make such a confession it is admissible.

The Court delivered their opinions *seriatim*.

*MORTON J.* The witness was proceeding to relate the confession of the prisoner, when some expressions came out, as it is contended by the counsel for the prisoner, which would make the subsequent conversation improper evidence. Confessions are not always evidence against a prisoner. Experience proves that men are sometimes led to confess what is not true. It is a general rule that confessions are admissible; the exception to the rule is when confessions are obtained by means of threats or promises, when made under such influence, they are inadmissible.

It was supposed that the witness was about to go on and state the disclosure of Joseph, and the question to the prisoner was whether he assented to it. This, if it implied his own guilt would be important evidence, if not, then it would be irrelevant.

It seems to me very clear that there was a direct inducement held out to him to confess, because he did not assent to Joseph's confession before it was said to him, that there might be some chance for pardon. I am therefore well satisfied that such an inducement was held out, that the conversation should be excluded.

But it seems to be the object now to shew statements made at the same time, besides assenting to Joseph's confession.

It seems to me that the same inducement would operate through the whole conversation; whether it would extend to a subsequent conversation or not, it is not necessary to decide. I am therefore of opinion, that not only his assent to Joseph's confession, but any declaration made at the same time must be rejected.

WILDE, J. I am of the same opinion; though it is a case of considerable difficulty. I do not place my opinion on the nature of the evidence, as was urged by the counsel for the prisoner. The rule of evidence in all cases, capital, as well as others, is the same, that the slightest influence of hope or fear, is sufficient to exclude the testimony. Then what influence was there in this case? It was the object of Phippen Knapp to obtain the prisoner's assent to Joseph's disclosure. Phippen remarked to the prisoner that there would be no chance for Joseph, if convicted, but for the prisoner there would be a chance for pardon, and appealed to the witness, who declined giving an opinion, because he would not hold out any improper encouragement. His assent would be an implied admission of his participation in the guilt. This must necessarily be evidence of a confession, whether direct, is not the question; if of any description, then it comes within the exception.

The next question would be upon the testimony to the admission of facts stated by the prisoner as within his own knowledge. If inducement is held out to the prisoner at one time, and he afterwards confesses, that evidence is to be rejected.

PUTNAM, J. I entertain a somewhat different view of this question. I lay out of the case all consideration of the weight of the evidence.—The Government offer to prove the confession of facts tending to shew that the prisoner was guilty of the charge against him. Such evidence is either the very best or the very worst; if the confession was made without hope or fear, it would be the best evidence.

Confessions are generally evidence. Then is this case within the general rule? Neither fear nor hope existed in this case. The object in going to Frank's cell was to ascertain if he would consent to Joseph's confession. And it is said, that if he assented to Joseph's confession, this would be evidence against him. But it seems to me most evident that it is not so. The object of the Government now is, to prove some independent confession of his own.

It was not the subject of the conversation, whether Frank should make a confession. It seems to me we stop *in limine*. It is not the question whether he consented to Joseph's confession, but if he stated any fact within his own knowledge, without the inducement of hope or fear. And it seems to me that there was no inducement to confess, held out to him. Any confession made at that interview, should, I think, be admitted.

It is the opinion of the Court that any thing said by the prisoner, after what Phippen said to him, is not admissible.

*Mr. Colman, resumes.*

It was just at the close of the interview, that Phippen appealed to me. He had told Frank, more than once, in the course of the conversation, that there might be a hope of pardon.

THE COURT direct the witness to state all that was said in relation to encouragement.

Early in the interview, Phippen said that Joseph had decided to make a confession, &c., (as above,) and afterwards repeated this, and appealed to me. Frank then asked me to use my influence, or interest, for him. I told him that I could promise nothing, but that I thought his youth would be in his favor.

I have stated all the encouragement that was given. There was not the least encouragement given to him, either by me or in my hearing, to relate facts within his own knowledge. Soon after this interview, I found

the club under the North steps of the Church, in Howard-street. I went there on the 20th of May, about 1 o'clock, with Dr. Barstow and Mr. Fettyplace. The steps are of wood—under the lower one there is a rat-hole—in it I found this club—[which see in the Plate, in Appendix.]

*Webster.* Who told you it was there?

*Dexter.* I object to this question. The finding of the club is all that can be given in evidence. This question is introduced to criminate the prisoner and therefore it is not admissible; for it is criminating him by his confession of that fact, and no part of the confession is evidence. (Cites *Leach, Cr. Law, 300.*) I call the attention of the Court to the principle, which is to give his confession against him, which has already been ruled out. (Cites, *Phill, 83.*) In this passage is the origin of the doctrine.—(*Leach, 300. 2 Stark. 50.*) The case cited by Starkie does not support him, and it is against the principle.

*Court.* We are very clear that it is competent for the Government to prove that this club was found in consequence of information from the prisoner.

(*Mr. Colman resumes.*) Frank Knapp gave me precise directions where to find the club, and I found it as nearly as possible, in the place pointed out by him.

*John C. R. Palmer, called.*

*Gardiner.* We object to him, on the ground of want of religious belief.

*Court.* You have your choice of the mode of proof, but if you inquire of him you cannot prove it in any other way.

*Witness sworn to answer.*

*Gardiner.* Do you believe in the existence of Divine Providence, and in a future state of rewards and punishments.

*Answer.* I do.

*Witness then sworn in chief.*

*Webster.* We now expect to prove a conspiracy, between the two Knapps and the two Crowninshields, to commit this murder; having done that, we propose to prove acts done by all, in pursuance of the common design.

*Gardiner* objects to this course, because it is never pursued except in conspiracy and treason. [6 *T. R. 527.*]

*Webster* cites *Stark. 210* and *6 T. R. 527.*

*The Court.* We are satisfied with the course pursued by the Government.

*Palmer.* I have seen the prisoner at Crowninshield's, in Danvers. The first time, he came on the afternoon of the 2d of April, about two o'clock, with a young man named Allen—they came on two white horses. I saw the prisoner in company with George Crowninshield. Did not see them in the house; I saw them from the window of the chamber; they walked away together. I did not see them again till after four. Richard was with Allen. All four returned about 4. Allen and Frank then went away on horseback. George and Richard immediately came into the chamber where I was.

*Dexter* objects to asking what agreement the Crowninshields said they had made with Frank Knapp.

*Court.* The Government intend to prove a conspiracy—they may begin at either end.

There was then a conversation between us about the proposed murder of Captain White—both George and Richard spoke of it.—George, in the presence of Richard, proposed to me to take a part in this murder. The object of the murder was something that Frank Knapp had told them. The motive held out to me was one third of the \$1,000 they were to receive from Joseph Knapp. Richard said it would be easy to meet him that night, and overeat Mr. White's carriage, for George said he had gone out to his farm. Joseph Knapp's object in the murder was to have a Will destroyed. George said

to me that I was poor, and in want, and had no funds, and that this would be a good time to supply that want. George said that the housekeeper *would* be away at the time of the murder. Frank came again on that day, about 7 o'clock in the evening, in a chaise, and alone. He stayed then over half an hour. Richard went away with him in the same chaise. I did not see Frank afterwards, till this time, but Richard came home about 12 o'clock that night. I do not know by what conveyance. I left Danvers the next day, which was Saturday. The Will was to be destroyed by Joseph Knapp, who could get the keys from the housekeeper, and have access to the trunk in which it was kept. I understood that the Will was to be destroyed at the time of the murder. This Will Joseph wished to have destroyed, because it gave all Mr. White's estate to a Mr. White, then living at the Tremont House, in Boston. I next saw the Crowninshields at their house, in Danvers, on the night of ninth of April. When Richard went away with Frank in the chaise, as above stated, he said he was going to the Lynn Mineral Spring Hotel. On the 9th of April, I went about 12 o'clock to the Crowninshields' house, and spoke under the chamber window to George, who opened it, and asked who was there. I told him, and asked him to come down. He came down, and asked if any one was with me. I told him no. He then let me in, and asked me if I had heard the news in Salem.

I staid there a short time, and then went that night to Lynnfield Hotel, where I put up. Next day I went to Providence, and staid two days. On the evening of the 27th, I saw the Crowninshields again at their house, about 10 o'clock. I stayed till 29th. Richard gave me four 5 franc pieces; I asked him to let me have it, and promised to return it. I then went to Lowell, then to Boston, then to Roxbury, then to Belfast by water, with Capt. John Boyle. While at Belfast, I wrote a letter to Joseph J. Knapp. [For the letter, see Appendix, p.p. 4—5.]

*Dexter.*—I object to reading the letter.

*Putnam J.*—Its bearing upon the prisoner should appear.

*Webster.*—It was received by his father, and the prisoner to divert suspicion, caused two other letters to be written.

*Court.*—Let these first be proved.

*Wm. H. Allen, sworn.*

I put these letters into the Salem Post Office, on Sunday afternoon, May 16th, between 5 and 6, at the request of J. J. Knapp jr. He gave them to me, and said that his brother Phippen and his father came up to Wenham the day before, and brought an anonymous letter from a fellow down East, and which contained a devilish lot of trash, such as 'I know your plans, and your brother's, and will expose you if you don't send me money.' He said that they had a good laugh upon it, that he requested his father to give it to the Committee of Vigilance. "What I want to see you now for, is to have you put these letters into the Post Office, in order to nip this silly affair in the bud." He said several other things, but I don't remember all. He said that his mother Beckford was getting old.

*Webster, reads the letters.*

*May 13, 1830.*

Gentlemen of the Committee of Vigilance.

Hearing that you have taken up 4 young men on suspicion of being concerned in the murder of Mr White I think it time to inform you that Steven White came to me one night and told me if I would *remove* the old gentleman, he would give me 5000 dollars; he said he was afraid he would alter his will if he lived any longer. I told him I would do it but I was afeared to go into the house, so he said he'd go with me, that he would try to get into the house in the evening and open the window, would then go home and go to bed and meet me again about 11. I found him and we both went into his chamber. I struck him on the head with a heavy piece of lead and then stabbed him with a dirk, he made the fin-

ishing strokes with another. He promised to send me the money next evening, and has not sent it yet, which is the reason that I mention this.

Yours &c.

GRANT.

[This letter was directed on the outside to the "Hon. Gideon Barstow, Salem," and put into the Post Office, on Sunday evening, May 16th, 1830.]

Lynn, May 12, 1830.

Mr White will send the \$5000 or a part of it before to-morrow night, or suffer the painful consequences.

N. CLAXTON 4th.

[This letter was directed on the outside to the "Hon. Stephen White, Salem Mass.," and put into the Post Office in Salem, on Sunday evening May 16th.]

[For Palmer's letter, see Appendix. pp. 4.—5.]

(Allen resumes)—I went to Danvers, with Frank, on the 2nd of April, on horseback—on white horses.

Palmer recalled and cross-examined.

On the night of the murder I was at Babb's, the Half-Way House in Lynn. I was there from 7 in the evening, till 9 in the morning, and then went to Lynnfield, to meet John Dearborn, of Chester, N. H. We had appointed a meeting there. I expected to go to New York with him to go into business—I had no particular business in view. I first came to Salem 3 years ago, and from there went to Danvers to see the C's. I had an invitation from George at New York: I came back to Salem last March. I can't tell every place I have lived in between my visits to Salem—at New York part of the time and at home in Belfast. I lived at Thomastown 2 years. I was there occupied in *cutting stone for the State*. I don't know who employed me in behalf of the State. While in Salem, at the Lafayette Coffee House, I bore the name of Carr—*preferred that name at the time*—stayed at the Coffee House 2 weeks.—While at Danvers I lived with the C's in their room, apart from the rest of the family. I came from jail to day. I have been there since June last, and have been visited by Mr Colman, Mr Stephen White, my father, &c. I was brought up from Belfast in irons. I made the disclosure from my own wish, and was not compelled to do it. I knew the flannels were stolen in Danvers—saw it in the paper—(he declined answering any more about the flannels.) I told Mr Waters that I did not want *Counsel*. While at Babb's I bore the name of George Crowninshield. I have been told that I should not get the reward and have no expectation of it—perhaps I expected part of the reward when I wrote the letter which I wrote to see if Joseph Knapp was connected with the murder. I was told by the C's. that it was only a joke when they proposed it, and did not think them serious until after the murder.

*Re-examined by Government.* I have never complained of the officers of Government, and have refused a pardon from them in this case.

*Wm. H. Allen recalled.*

Frank proposed the visit to the C's. We first met Dick—he invited us in, and in a few minutes George came in. Dick went to show me the factory and we separated from George and Frank at the house. After going through the factory George and Frank rejoined us, and after talking a few minutes Frank and I left them and came home. We visited them also once last winter.

One evening, about 3 weeks after the murder, Frank and I met Dick in Bath street. I thought they might have something private and was walking away, when F. said "stop a minute and I'll join you."

*Cross examined.*—Dick and I were in the factory 15 or 20 minutes. Frank did not request to be left alone with George. We were separated 1-2 or 3-4 of an hour.

*Re-examined.*—Frank's usual dress was a dark frock coat, and a glazed cap with a large glazed star on the top, and a camblet cloak.

*Cross-examined.*—Glazed caps and camblet cloaks were a common dress. I wore such a one. Wm. Peirce also had a glazed cap, and a Scotch-plaid cloak.

*William Osborne, sworn.*

I keep a livery stable in Salem. Francis Knapp has been accustomed to hire horses of me. The charges on my book against him from April 1, are as follow :

April 1. Horse and Gig to Lynn Mineral Spring. April 2. Saddle horse to Dustin's, in Danvers. William H. Allen had a saddle horse same afternoon. Francis Knapp had a chaise same day, in the evening. I find the charge of horse and gig to Spring altered, the word Spring erased, and ride substituted. I think the alteration was made by Francis Knapp, it is in his hand writing. April 3. Saddle horse to Wheeler's, which is about half a mile from Dustin's, and the same distance from Crowninshield's. Do not recollect the time of day. The last charge on that day is a saddle horse to Francis Knapp, to Wheeler's. April 5. Saddle horse to Wenham. April 6. Horse and Gig to ———. This is in my own hand writing. Do not know where he went. No price is put down. Have never ascertained where he went. April 19. Horse and Gig to Wenham. April 21. Horse and Gig to Wenham, and over that I find the name of Joseph J. Knapp. April 23. Horse and Gig to Wenham. April 24. Horse and Gig to Wenham. This is the last charge on the book that day—there are eleven previous charges. April 25. One half horse and Gig. April 27. Horse and Gig to Wenham.

*Cross-examined.* I make charges when horses are given out. Don't know when Francis Knapp came from sea. He rides considerable. Don't know where they go. I leave a blank till I ascertain. Always trusted him. March 30. Horse and Gig to Wenham. March 29. Half of the charge of Horse and Gig to Spring. March 28. Quarter of charge of Carryall. He hired horses and chaises frequently. Not often hired horses in the evening, but did afternoons. Can't tell much about the time of day by my method of charging. The father of the prisoner failed on the 6th of April. No charge to prisoner from that time to April 19. There are on my book ten charges before his on April 5. I have four white saddle horses, and others used occasionally. I have one horse, called Nip-Cat, of sorrel color, slim, and a smart trotter—rather remarkable.

*Thomas Hart, sworn.*

I live with Mrs. Beckford, at Wenham, and am hired to work on the farm. I went there on the 9th of last April, and was hired by Capt. Joseph Knapp. Mrs. Beckford came there to live about the 15th of April, and Frank Knapp about the 23th.

One Saturday evening, about 25th of April, Frank came there. Mr. Davis and Joseph Knapp had been to Salem, and had returned about half an hour. Frank came about 7 o'clock, knocked, and Joseph Beckford went to the door, and asked him how he came there at that time of night. Joseph Knapp went out with him to the chaise, and remained a quarter of an hour. I think I heard the voice of a third person in the chaise. They then came into the house, and went into a room by themselves, and staid about ten minutes. The chaise came a little after 7, and staid a little more than half an hour. Mr. Davis and Benjamin Leighton were there. It was dark, dull, cloudy weather. Frank had on a camblet cloak, and leather cap. Frank went in where Joseph was, and no one went with him. I was in Mr. Davis's kitchen. Joseph, on the Tuesday after this Saturday, gave me some 5 franc pieces to buy meal with. It had been dark half an hour, I should think, when Frank came. Joseph and Frank were pretty near the chaise, while talking together, and near the N. W. corner of the house. I heard three voices, which all came from where the chaise was. They did not move from that place while talking. F. Knapp has worn a dagger, and I have seen

him several times prick Benjamin Leighton with it, while out in the field. And one night after we had gone to bed, Frank came up and pricked Ben through the bed clothes, Ben asked him not to, and he said "lay still, you will not feel it after a little time."

*Ezra Lummus, sworn.*

I live in Wenham, and keep a public house there, about a quarter of a mile below where Mrs. Beckford lives. I saw Dick Crowninshield at my house for the first time, in the latter part of March. He and a young man, I didn't know who, came to my house on that day—left their chaise—went away and were gone sometime. The man with Dick Crowninshield had on dark clothes and a glazed cap, I think.

Ten days or a fortnight after the murder, on Saturday, I believe, Dick Crowninshield came again with a person whom I did not know. I was not at home when they came, but found them there. They paid their bill with a 5 franc piece, and my wife brought it to me for examination, and I gave the change to Dick. They then went away—I cannot fix the hour precisely, but should think that it was about half past 9 when I came in—they staid but a very short time after that—not more than 5 or 10 minutes. I can't *exactly* describe the man who was with Dick, but he was about my height, and rather stout—stouter than Frank Knapp I think.

*Cross-examined.* I knew at the time that the coin was a five franc piece.

*Mrs. Lummus, sworn.*

Some persons were at our house about the 24th or 25th of last April, and passed a 5 franc piece, I think it was the latter part of the week, and on a misty and rather cold evening. Wood was brought in and a fire made up. I carried the 5 franc piece to my husband. I can't say, positively, whether this was before or after Mrs. Beckford came to live in Wenham—or before a certain robbery, heard of there.

*Cross-examined.*—I did not know either of the young men. One had a dark dress, but I don't know how the other was dressed. I am not certain that this was before the Knapps' robbery. It is my impression that it was.

*Josiah Dewing, sworn.*

I came home from sea last spring, and brought from 3 to 4000 5 franc pieces. About 500 were for Joseph Knapp, jr. and were brought from Point Petre, Guadaloupe, and paid to him. So far as I know, all but his went into the bank, as a deposit. The distribution of them was about the 21st of April last, and I have the receipt of Joseph for his portion.

*Cross-examined.*—I have been a ship-master several years. It is nothing unusual to bring home 5 franc pieces. Don't recollect bringing home any lately, on any other occasion.

*Daniel Marston, sworn.*

I know George Crowninshield, and in the course of last spring I received from him two 5 franc pieces. This was on Saturday, the day before his arrest.

*Cross-examined.*—I keep a victualling cellar. Five franc pieces are not a common currency. I do not often take them—not so often as I do hard dollars.

*George Smith, sworn.*

I attend Mr. Chandler's grocery store. On the evening before the Crowninshields' arrest, I received from some person, and in the presence of George Felton, a 5 franc piece.

*Cross-examined.*—I have frequently received them from other persons.

*George Felton, sworn.*

I know George Smith—I went into Mr. Chandler's store with George Crowninshield, when he paid Smith a piece of silver.

*Joseph Shatswell, sworn.*

Capt. Dewing brought home some 5 franc pieces for Joseph Knapp, jr. last spring and they were paid to him. Those that belonged to the owners were deposited in the Mercantile Bank, and remain there now.

*Cross-examined.*—I have had them come home frequently. I take about three hard dollars to one 5 franc piece. I have traded to Guadeloupe five years, and the return has principally been in 5 franc pieces.

*Stephen C. Phillips, sworn.* I was one of the Committee of Vigilance. The two Knapps came before the Committee at their request to give an account of a robbery, said to have been attempted upon them at Wenham.

*Dexter.* I object to any proof of this robbery.

*Webster.*—It is always competent to prove, what persons under suspicion do, to divert that suspicion. I cite to this point. 1 Stark. 492-493.

*Dexter.*—Such evidence is just as if that of a generally bad character was given to the Jury—besides, it is not within the rule laid down by the Court in relation to anonymous letters. This is, also, a distinct crime.

*By Court.*—It is now proposed, by the Counsel for the Government, to prove that the prisoner got up a fictitious robbery. This is objected to, on the other part, because it is a distinct offence, and has no relation to the crime now charged.

It is now clear, that the Government may prove that the Defendant took measures to divert suspicion from himself, and it would seem to follow, that any evidence which tends to this point is admissible. The Court will take care in charging the Jury to give such evidence its proper direction, and its weight will be left to them.

*Mr. Phillips proceeds.*—I have known Jos. Knapp some years, but have never known Frank. On Tuesday, 27th of April, it was stated in town that the Knapps had said they had been attacked at Wenham. The Committee thought it proper to make inquiry into this affair. The Knapps appeared before them, on the evening of 27th. I took minutes of their statements. I have these now with me, and can state more fully by referring to them. They are in my own hand writing. The questions were chiefly addressed to Joseph in the presence of Frank. I believe these minutes were read over to them, for this was our general practice.

*Court.*—These minutes may be used as a memorandum to refresh your recollection and if they are proved to have been read, they will become evidence.

*Nath'l Kinsman, sworn.*

I am one of the Committee, and was present on that evening. They were read to the prisoner and his brother, and they assented to them.

*Court.*—They may then be read.

*Mr. Phillips*—Joseph was the narrator.

"Tuesday Evening, April 27, 1830. Left Salem at half past 8 o'clock, in a chaise for Wenham. About twenty minutes after 9 o'clock, within a few rods of Wenham Pond Hill, so called, (this side of the pond,) saw 3 men, in the middle of the road, walking towards us. The two on right and left seemed to step forward a little, leaving the centre one in the rear. The centre one stepped up and took the horse by the bridle, with his left hand, and seemed to be taking out an instrument with his right, an appearance of an ivory dirk handle. This fellow was dressed in a dark short jacket, (a sailor's jacket,) cloth cap, not glazed, did not notice pantaloons—dressed like a sailor, but did not act like one. White men—had two black marks (amouches) on their cheeks, to resemble whiskers—not real whiskers. The fellow who seized the horse, said "How do you do?" or something of the kind. Then he said, "Where are you going?" or, "where are you bound?" My brother answered, "I will let you know, d—d quick"—and my brother then drew his sword-cane. In the mean while, I struck the one who came up on the right, with the whip. This last fellow took hold of the handle of a trunk, at the moment I struck him. I struck him across the right cheek. The fellow on the other side, at the



same moment, made a motion to shove the trunk across the chaise. The fellow whom I struck with the whip, wore a long coat, dark, without bright buttons, hat, no whiskers; was a stout man—all pretty good sized men. The one who came up on the other side of the chaise was very tall and square, stout whiskers, apparently false, black hat, straight coat of a dark color. Francis made his reply to the man who held the horse, and immediately drew his sword cane and made a pass at the fellow who came up on the left. As he struck, the fellow sprang back. Francis then sprang out of the chaise and made another pass at him—the fellow ran, and got over the stone wall, before he could reach him. The fellow who came up on the right, passed round back of the chaise, and then made off over the wall in the same direction as the other. The fellow, who held the horse's head, ran off at the same time, and in the same direction. All went over stone wall, or left hand side of road towards Wenham Pond. Francis Knapp then returned to the chaise—and just as they were starting, heard a shrill whistle. We heard the mail stage pass, just as we got to our house. Think the fellows, or scouts employed by them, may have heard the mail stage coming along; and therefore whistled to alarm the rest. Perhaps whole detention did not exceed three minutes. Old house near spot (distant say, as far as from here to common) occupied by an old woman—doubtful character—am inclined to suppose it a house of ill fame; this old woman was yesterday twice on our premises—Called once for milk—Was never at the place before. Her name is Wheeler. I left farm in afternoon and was probably seen to pass by people in this house. The fellow, at whom Francis Knapp made a pass, leaped over wall, without touching it.”

Frank added that the fellow leaped over the wall without touching it. He also said that if he should be attacked again he was prepared to give them cold lead. These men described by the Knapps, corresponded to some men who had been suspected. The men seen in Brown street were described,—I believe the one as having on a coat and the other a short jacket and cap. Concerning these last, we had, at that time, but little information.

*Cross-examined.*—We had before inquired, particularly, about the dress of certain suspected persons. The appearance of persons described by the prisoner, bore some general resemblance to persons publicly described. The Committee consisted of 27 members and we met every night for some weeks. No leading questions were put to the prisoner, by the Committee during the examination.

*Warwick Palfrey, jr.* sworn and shewn a newspaper containing an account of the robbery.

I am the Editor of the Essex Register, and published this number. It is dated May 3, 1830. I know the Knapps perfectly well, and having heard several reports in circulation respecting the robbery in Wenham, I applied to them for an account of it. They gave it to me at the News Room, and on my return to my office, I reduced it to writing, and published it as I received it from their mouths. I did not show it to them after it was written. I think Joseph J. Knapp, jr. gave me the particulars. [Mr Palfrey then repeated the particulars, as recited by Mr Phillips.]

*Cross-examined.* Had no doubt at the time, that the statement was true.

*Nehemiah Brown*, sworn. I am the Keeper of the Salem Jail. On the fifteenth of June, a little before two o'clock in the afternoon, I had occasion to go into George and Richard's room, to carry notes. Called at Richard's room, but had no answer. After calling for him a second time, I looked over the top of his door, and saw him hanging at the grate. Called turn-key and went in. He was hanging by two handkerchiefs. Took him down. Called in physicians. They attempted to restore life, but without success. I then sent for a Coroner.

The Attorney General then read the inquisition on the body of Richard Crowninshield, jr. The verdict of the jury was *felo de se*.

*Mr Brown cross-examined.* The Rev. Mr Colman visited the cells of the two Knapps. Which first do not know—but both on the same day. Richard

Crowninshield's Counsel had constant access to him, when they chose. Richard Crowninshield was usually supplied with newspapers.

*Mr. Palfray* called again. I published a number of the Essex Register on *twenty-first May*, containing the disclosure of Joseph J. Knapp, jr.

*Cross-examined.* I published an article respecting the finding of the flannels in Danvers. Should think it was *three or four days* before Richard Crowninshield's death.

*Richard Burnham*, sworn.

On the evening of the murder saw George Crowninshield, with *two* others, in Essex-street, near Franklin Building, about *sixty* rods from Capt. White's house—near Newbury-street. They were going towards the eastward. One of the persons with him was Chase. Did not know the other. It was about *eight o'clock*.

*John McGlue*, sworn.

On the night before the murder, saw Richard Crowninshield, jr. standing opposite Capt. White's house. Found him standing there. He was not doing any thing. I was going up along, on the south side of Essex-street, and when I came up to the brick house next to *Dr. Barstow's*, I found him standing near a post, he had his head turned up, so as to look up towards Coffee House, or that way, so that I could see side of his face. Think that where he was standing was a little higher up than the house of Capt. W. It was about half past *eight* in the evening. Crowninshield walked up with me, as far as the Post Office. Asked me, if I was going further. I told him no, and he continued on.

*Cross-examined.* Lafayette Coffee House is west of Capt. White's house; a short distance. Richard Crowninshield, jr. was opposite upper end of the house. He might have been there an hour, for all I know—did not see him till I came up. Do not know whether there was a party of girls opposite. This was Monday night. Richard Crowninshield, jr. was by brick building next to Dr. Barstow's.

*Benjamin S. Newhall*, sworn.

I saw George Crowninshield on the evening of the murder, April sixth, passing down Williams-street. It was a little before 10 o'clock. There was a person with him, whom I did not know. He had on a glazed cap. Do not know particularly other parts of his dress. He was a little shorter than George.

*Cross-examined.* It was between half past 9 and 10 o'clock.

*Thomas W. Taylor*, sworn.

I saw George Crowninshield on the evening of the murder, at from fifteen to twenty minutes after nine, passing by door of my store in Newbury-street which runs down by the Common. A man was with him, whom I did not know. Store in northwest corner of Franklin Building. He was on the east side of Newbury-street. Some person spoke to him at corner of Newbury and Essex streets, and asked him, where he was going. George said, "You know, all the way down town."

*Cross-examined.* He was going down towards Williams-street, from Capt. White's house. When I first saw him, he was in Newbury-street going towards Williams-street. Do not know whether he came up or down Essex-street.

*Joseph Anthony*, sworn.

On the evening of murder, I saw George Crowninshield going from Essex-street into Central-street. Two other persons were with him. One was Chase; the other I did not know. George had on a short jacket and fur cap. They were talking, as they passed.

*Benjamin Horton*, sworn.

A year ago last spring, I saw Richard and George Crowninshield at Lynn Mineral Spring Hotel. Chase was sitting near Richard Crowninshield. Saw dirk in Richard Crowninshield's bosom. Dick told me it was his *nurse child*.

Prisoner's Counsel objected to the statement of what Richard Crowninshield said. The Court observed, that they could not see, but that it might tend to prove that Richard Crowninshield usually wore a dirk, that instrument being alleged to have been used in the murder, and they therefore thought the evidence admissible.

*The Witness proceeded.* Richard Crowninshield commonly carried it with him. I examined it, and should think the blade was from *five or six* inches long. The handle was bone or ivory. Had a cross hilt about three quarters

of an inch long. Called on them about a fortnight after murder, to see if they would say any thing about murder. Saw Richard Crowninshield near workshop. He went into the house, when he saw me. Afterwards came out, and we bid each other "Good morning." George came out soon after, and asked, when I came from Portland, and if any kind of gaming could be carried on down there, as he and Dick thought about going down there—said they intended to go down, but meant first to make a *raise* at Election. Inquired of me about steam-boat. Showed me some false props, they had been making. I agreed to meet them on the next Thursday evening, at Salem Hotel. They were arrested on the following Sunday. I had received information in Boston, that I was suspected of the murder of Capt. White. I immediately wrote a letter to Dr. Barstow about it, but received no answer. Went to Hotel, saw there the two Crowninshields and Chase. They were whispering among themselves. Every body seemed to look at me with suspicion. I wanted to see if they (the Crowninshields) knew any thing, and made them think I would go with them. Said they had good game all winter at their room in South Salem.

*Cross-examined.* Mr. White suggested to me the expediency of going out to Danvers, to see the Crowninshields. Went to see if they would tell me who murdered Capt. White, but did not tell them so. Went partly on my own account. Told Mr. White, in Boston, that I thought of going out to Danvers, to see the Crowninshields. I wanted to see if they would say any thing about murder. It was after conversation with Mr. Stephen White, but don't know whether he or I proposed it first.

Don't know how I came to be suspected. Know no cause—heard a check was drawn by Mr. White for \$1000 on a Bank in Boston. I had asked Mr. Stephen White to loan me \$50, which he did. Having occasion to pay Mr. Leavitt \$1 37, I asked him to change this check. He could not, and went into the Bank, at the back door, as the front was shut. I borrowed money of Mr. Stephen White two or three months before the murder. Mr. Theophilus Sanborn said, I had a check of Mr. White for \$1000. On the night of the murder I was at Windham, 14 miles from Portland.

*Cross-examined.* When in Portland saw that a reward was offered. It was Thursday morning, at about 10 o'clock. I was not to have any thing, if I obtained information from Crowninshields.

*Stephen Mirick.*

I live directly opposite to the corner of Mrs. Andrew's yard, on north side of Brown street. About 15 minutes before 9, on the evening of the 6th of April, I saw a man standing at a post, directly opposite my shop, on the opposite side of the street. He stood with his arms on the post, and facing the common. I had a fair view of him. I did not know him. He remained there apparently waiting for some one—this led me to be more particular, in noticing him. He stood thus, till the bell rang for nine, changing his situation a little. After the bell rang, I went out as usual and shut my shutters, but did not put up the slide to my door, so that I might see if any one came to meet him. He walked back and forth twice, certainly, if not more. When any one came down Brown street, he went into Newbury street, and then turned so as to meet him at the corner; and if any one came down Newbury street, he went into Brown street, and turned to meet him in the same manner. From this post he could see up Newbury and Brown street, about as far up one street as the other. I stood to see if any one should come to meet him. He remained there till 20 or 30 minutes after nine. I did not see him go away, and he was there when I shut up and went home. He had on a frock coat which came round him very tight, was very full at top and bottom; it was of a dark color. I can't say, what he had on his head. I did not observe his face at all. I never saw the prisoner till he was brought before the *Grand Jury*. It is my belief that he was the man at the post.

*Dexter.*—Objects to mere belief.

*Webster.*—In questions of identity, it is always admissible. (Stark. 127.)

*Webster.* Have you, as you know, or believe, seen that person since?

*Ans.* I think I have seen him since.

*Webster.* Where have you seen him, and what name did he bear?

*Ans.* I think I saw him when he was brought up before the *Grand Jury*, and when he was brought up, once or twice since. I think it was Francis Knapp. Can't swear positively, but I believe it was he.

**Court.** Was this belief derived from personal observation, or from what you have heard from others?

**Ans.** From both—that is, from my observation at the time, and from the description of the person seen that evening.

**Court.** From your own observation alone, do you say, it was Frank Knapp?

**Ans.** No I should not. Can't say positively, from my own observation. But the size and height of the man, I saw, correspond very nearly to prisoner. His dress is different now.

**Webster.** I suppose, we may ask, what description of dress has been given to him.

**Court.** His belief arises from two sources. What he had from others, is not evidence.

**Cross-examined.** I saw the prisoner when he was brought up to be arraigned, week before last, on Tuesday I think. Don't know what part of the day. The first time, I saw him, was one day, when he was brought in to hear indictment. I was in County-street—the prisoner was in a chaise. There were three chaises; he was in one of them, do not know which. Saw him get out of the chaise at the door. Did not see him, in this room.

He had on a light coat—they were all pointed out to me, as they rode up. Don't know who pointed them out.

**Re-examined.** Prisoner, at the Bar, is the same person who got out from the chaise, and was pointed out to me, as Francis Knapp.

**Cross-examined.** I can't say whether I asked which was Frank Knapp. I heard some person, who stood by, say this is such an one, and this is such an one. Believe, I did not inquire, which was Frank Knapp, or speak to any one.

*Peter E. Webster, sworn.*

I live in Bridge-street, corner of Pleasant-street. My place of business is in Essex-street, nearly opposite Newbury-street. I have occupied for purposes of trade several buildings. Always have more or less property about Branch Meeting-house. Occupy the cellar of it. I went home about half past 9 in the evening of April 6th; from half past 9 to 10. I generally go to Post Office first. I went through Howard-street on my way home. About a quarter of the way down Howard-street, saw two persons—overtook them, at the bottom of street, near new road. They were walking about the middle of the street. This is a narrow-street. They were walking down towards river. Passed them at the lower end, where it goes out. I took one of them to be Frank Knapp, and mentioned it once or twice. Did not think any thing about it, more than if I had seen any body else. Have always known Frank Knapp for a dozen years. When at home generally see him every day or two. He is sometimes at sea. I passed nearest to him, and I supposed him to be Frank Knapp. I then took him to be Frank, and I have never altered my mind. The other person I did not notice. They were walking slowly. I turned to the right. They were going same way. They followed me. When I last saw them, they were about a dozen or twenty rods from the bottom of the street. They did not pass my house. Did not see them, after they got to the rise of the hill. Capt. Knapp, the father, lives in Essex-street, near my store. The prisoner stays at his father's, when at home.

**Cross-examined.** I did not see the face of the man. Knew him by his air and walk. Passed within 6 or 8 feet. Did not speak to him, nor he to me. I sometimes speak, and sometimes do not speak to him when I meet him. Both men had dark wrappers, and glazed caps. Night was cloudy, and a little damp. Don't know Richard or George Crowninshield. I know it was sixth April. Took notice of the men, because unusual to see men, in that street. Don't know, that it is a street, where assignments are made. I mentioned it to Mr. Foster, Cashier of Asiatic Bank. Do not recollect how soon. Do not know, whether before the Knapps were taken up, or afterwards. I thought it was Frank, whom I saw there, before they were taken up. Told Mr. Foster one of them was Frank Knapp. The Post Office generally opens at half past nine. My usual hour of going to Post office, was a little after nine.

Could not say positively who the person was, without seeing his face. Thought they were waiting for somebody because they walked so slow. I know that night—recollect the appearance of the night on account of the weather. I sometimes go home other way. I did not go that way the night before.

Do not recollect what the weather was the night before. Heard of murder next morning. Sometimes take five franc pieces—not very common—take more or less every week.

*John A. Southwick, sworn.*

I live in Brown street, next house but two to the westward above rope walk. Mr Downing's house makes the corner of Howard street. On the evening of the murder, I left my father's house in Essex street, about half past ten to go home; as I passed up by rope walk, I saw a young man sitting there; as I passed him, he dropped his head. I stopped at Downing's door, then walked back, I think that time, then returned to Downing's house, and then to my own. Dropped his head every time I passed him. I felt very sure it was Mr Knapp. Passed him three times, when on the steps; he had a brown camblet cloak, and glazed cap. I then took that person to be Mr Knapp. I was brought up along side of him, within a few houses of him, from his boyhood. When I passed the third time, I went into my house—my wife was up. One time, when I went in, I spoke to her. The same person was in my mind, all the evening, after I saw him. I came out of my house, and walked to the corner of Downing's house, looking for this person, down Howard street, when Capt. Bray came up. He asked, what I was out there, so late for. Told him, I had seen a person, on rope walk steps, and about there, that looked suspicious, or whom I thought suspicious. He said he had seen one also, and pointed up to old Mrs Shepard's house, and said there he is now, on the opposite side of the street, further up. Looked and saw a person standing there. He came down by us, and went to the post nearly opposite Capt. Bray's door, and leaned over the post. When he passed us, we were near Downing's house, on that side. This man passed down on the opposite side. We walked down some ways, perhaps as far as Dr Johnson's house. While he was at the post, we went in, at the west end of Bray's house, and went into the house, at the end door. Front door is on the north side of the house, the side nearest post. Went into his chamber. When we went in, only half of one shutter open. I stood back. Mr Bray watched. In a short time he said, another one has come up. Now they have passed along to the west corner of the house, and that induced him to go to the window to look out. Saw one of the persons running across the street. (Here the witness referred to the plan which had been exhibited to the Court.) He ran round rope walk corner. The other went down towards Common. Thought he went round corner. Then Mr Bray and I came out, went down Howard street, round up Williams street, and back home. We parted in front of Bray's house. Mentioned to my wife, what I had seen. Told her, I had seen a person, that I supposed was Frank Knapp, without making any further observation. Do not recollect dress of person leaning on post.

*Cross-examined.*—The time, when I first saw this person, was about half past ten. I know, because I knew at what time I left my father's house. It is two or three minute's walk. My impression is, that I looked at my watch when I was at my father's, and thought it was time to be walking up. It was about half past ten.

The man upon the steps was two or three feet off, when I was nearest to him. I did not speak to him because I had nothing to say to him, and he hid his face. Perhaps I should not speak to him three quarters of the time, when I met him, owing more to his manner than mine; he rather evaded speaking; I don't know that I saw his face; his dress was a camblet cloak, I can swear to it.

I judged it was Frank Knapp, from the general appearance of the man. He was not wrapped up, for I could see that he sat cross legged. It was a cloudy night but moon was at the full. I don't recollect its raining; it did not rain then; it was misty at times.

I did not see the man on the steps get up and go away; but it is on my mind that it was the same man I saw at the post. I did not think it important to go out, though it looked suspicious in the man to drop his head when I passed and to be sitting on the steps at that time.

I have no doubt he had on a glazed cap; did not see any fur about the cap. I went out the second time from suspicions expressed in the house, when I told what I had seen. They said in the house, they should like to have me go out, though I had said who I thought the man was. I have not known that Howard Street is a place of assignations for the last six months. I cannot say that I suspected the man was there for that

purpose. I cannot say what I suspected him of. When I met Capt. Bray, I told him my suspicions. He said there was a suspicious looking person on the other side the street by the post. Don't recollect seeing the man by the post 'till Capt. Bray pointed him out to me. He did this when we were standing by Downing's house. We saw him pass down the street. Can't say whether the man Capt. Bray pointed out to me had a cloak and cap. I thought it was the same I had seen on the steps, because I had seen no other in the street. I had the same suspicions about the man who walked down the street that I had of the man on the steps. Don't recollect stating before the magistrate that I took the person on the steps for Frank K. from nothing but his dress.

I cannot describe the dress of the person who came up and joined the man standing at the post, when we were in Capt. Bray's chamber. The post might be six or eight feet from the window. I can't swear to the dress of either. My impression is that one of them had on a light coat. Can't recollect the other's dress.

I don't recollect that I have told any person that I could not tell who the person was on the steps. Have no recollection of telling any person that I could not distinguish. I never said the man on the steps was Wm. Peirce, but compared him to Wm. Peirce in size and appearance. I don't recollect telling Capt. Bray that he looked like Wm. Peirce; never told him I tho't the man was Wm. Peirce.

I cannot tell how the man running across the street was dressed; I knew it was one of the same persons, because they appeared to be watching, and engaged in the same business.

We were looking out of the window 4, 5 or 6 minutes. I can't say the dress spoken of is a common dress, but many young men wear glazed caps and camblet cloaks.

I cannot tell when I was first examined before the Committee of Vigilance, or that I ever was particularly. I have been sent for and questioned about this matter; cannot say whether before or after the Knapps were arrested.

The observation of Capt. Bray, that the man had gone to the West end of the house, was made before I looked. I did not continue to look, but looked away. When I was looking out of the W. window, and saw one of the men running to the Eastward, I did not know where he went to.

I never said either of those persons was Crowninshield or Selman or Chase.

I was at Ipswich before the Grand Jury; did not state to them, that I supposed the person, that I saw on the steps, was Frank K. I was sworn to tell the whole truth. I did not say that it was Selman or that it was not. I said I thought that it looked some like Selman.

When I passed the man on the steps, I went half way to the Common; the first time I passed him I went as far as Downing's corner, then turned and went back half way to the Common, then repassed him and went home. I was watching the man 20 minutes before I went into the house; stayed in the house a few minutes; Capt. Bray and I watched him 5 or 6 minutes; we were in Bray's house 6 or 8 minutes; in going down Howard street, we went pretty quick the first part of the way; looked over into the burying ground by the Branch meeting-house, to see if the person was there; we stayed together perhaps two minutes after we came back, then went home. I did not hear the clock strike after I got home; it was about 10 minutes past eleven by the time-piece, when I got home. I have not said that I heard the clock strike eleven that night.

*Daniel Bray, jr.* sworn.

I live in Brown street, and in the lowest house on the S. side.

On the evening of the 6th of April I was passing down Brown St. from St. Peter's St. and when I passed the 4th house, I saw a man dressed in a dark full frock coat, dark pantaloons and shining cap standing at a post. The frock was very full at bottom.

I was on the North side of the street and he on the S. As I passed on I saw another man looking or peeping down Howard Street, who I found was Mr. John Southwick. I think I asked him what he was about there so late. He said that when he went into his house a man was sitting on the rope-walk steps. I turned round and observed, "there stands the man now." (I could see him very plainly up toward Shepard's house—it was so light.) Mr. Southwick then said that he did not like the looks of the man when he went in. I walked on with him close to the rope-walk, and stood so as to get out of the wind, when the man passed along on the South side and took his station at the post next the bounds between my house and that of Mrs. Andrew. I asked Southwick to go with me into my house, to see what he was about. We passed about 20 ft. from him and entered my west door, and went up into my chamber, because the sliding shutters in the room below were closed, and we could not uncloset them without noise. I looked out of the window and by pressing my face against the glass, I could see the man at the post, and never lost sight of him while he stood there, which was 5 or 6 minutes, when another man came from Eastward—in the middle of the road and not on the side-walk. I saw him when he was 150 or 200 feet off. From my window, I could see down Brown-street, and the Common, so the man must have come through Newbury-street, or we could have seen him sooner. He came up to the post close to the other without bowing, as near as he could get, and stopped. They then went together into the street 10 or 11 feet toward the N. W. and stood there not more than a foot apart, and not more than a minute. I could then see them better from the Western window. The man that came from the E. had on light clothes—he then ran as hard as he could down Howard-street. The other at the same time started off in the opposite direction, and was out of sight towards the E. I know he did not go up Brown-street, for he turned round and went to the East. When we got into the street we could see no one. We then went down Howard-street immediately, and as soon as we came to the Grave-yard, we looked over the fence several times, but saw nothing;—we looked over the fence repeatedly. Before we got down to the New Road we saw a light open waggon with a man in it passing along that Road towards Beverly. We went on round through Williams-street and came home. I don't know the prisoner now—but did know him 4 years ago. I have seen him since in prison, and at the bar. I can't tell whether he was one of those I saw that night; the size and general appearance agree very well. I had heard the clock strike 10, and should think that it was 30 or 40 minutes after when I met Southwick. After the murder I went up on Downing's steps, and could see all the North and West windows of Capt. White's house, and a light in the chamber where he slept—the windows of the room over that, those of the room on the same floor over the kitchen, and those of the room over this. These cannot now be seen because of leaves on the trees.

*Cross Examined*—The steps of Downing's house is the only place where I looked from. The windows could not be seen from the Rope Walk steps, or from Shepard's post, or from the post near my house, or while walking down under the fence on the S. side. I saw the man before I came to Southwick and it appeared singular that one should be standing there. He did not then tell me that it was Frank Knapp, but he has since told me. I believe after the arrest. I did not then hear Southwick say that the man looked like William Peirce, and believe I did not hear him say so when examined by Justice Savage.

*Mrs. Southwick, sworn,*

On the night of the murder Mr. S. came home after 10, went out again and returned just before or just after 11. I had looked at the time-piece just before.

*Capt. Bray, recalled by Counsel for Prisoner.*

My dress was a dark frock coat, dark pantaloons. Southwick's was reddish pantaloons, and we both wore hats.

*Miss Elizabeth Potter.* Sworn.

I live in Brown Street. The evening of the night of the murder, about half-past ten, I saw a person standing at the corner of Howard Street, looking down Howard Street. He turned and looked towards the house, when I opened the door. The house is nearly opposite the rope-walk.—His dress was light pantaloons, cinnamon drab, I thought, and dark coat; I don't recollect what he had on his head. I know Mr. Southwick and do not think it was he.

*Isaac H. Frothingham.* Sworn.

I was in Brown Street on the evening of the sixth of April. I was at Mr. James Potter's, nearly opposite the rope-walk. It was about half-past ten o'clock, when I came away; I looked at the clock. When I opened the door, I saw a person walking up the street slowly. He passed the door when I opened it. He turned and looked over, and remained there after I walked up the South side of the street. He was on the opposite side-walk, within a few paces of the rope-walk, when he first stopped. He then advanced a little farther, and that brought him to the corner of the rope-walk on Howard Street. I went on the same side of the street, and looking back, thought he was joined by another person. One of them was dressed in a dark coat and light pantaloons and hat. The person who joined him must have come up Howard street or Brown Street, or I should have seen him. They were standing there the last I saw of them.

*Cross-Examined.*—My first impression was, that it was Mr. Southwick; but afterwards came to a different conclusion, because I thought he was too tall, and if it had been Southwick, I thought he would have spoken to me. I thought his pantaloons were of a cinnamon drab color.

*Joseph Burns,* sworn.

I was born in old Spain; have lived here about 25 years. My place of business is in St. Peter street. I keep horses to let—my stable is near the head of Brown street. I know Francis Knapp. Had a conversation with him in the stable, after the murder, and after the Committee of Vigilance was appointed. It was just after the Wenham robbery. He came into the stable, and asked if any body was in the stable besides me. I told him no. He asked me whether I had any loft, or place up stairs; I told him yes. He said "the best way is for us to go up, as I wanted to say something particular to you." We went up—then he asked me if I knew any thing about Capt. White's murder. I told him "no—I wished to the Lord I should, because I would make it known pretty quick." He said the Committee had heard I was out on the night of the murder, till about 10 o'clock; and, said he, "if you saw any one, any friend, out that night in the street, don't you let the Committee know it, for they will try to pump something out of you." He said his brother Joseph was a friend of mine, and he himself too was a friend to me. He said the Committee wanted to pump me, to see if they could catch me, in one thing or another. I then said that I knew all the members of the Committee, and if they wanted me any time, I was ready to answer them to any thing. Then I asked Knapp what he thought of the Crowninshields, who were in jail. Mr. Knapp said they were as innocent of that as he and I. I asked him who did it, then? He said Capt. Stephen White must be the one. I said, "don't you tell me such a thing as that. I know Capt. Stephen White, and have known him ever since he was 18 or 19 years old." Then he put his hand under his waistcoat, where he had a dirk, and showed the handle. I said, "d—n you, I don't care for you, nor twenty dirks." Then he said that he was a friend to me, and had come to give me this information, that I need not get into difficulty. I know Joseph J. Knapp, jr.—he used to come to my stable to hire, and to put up horses. He was there on the week before the murder. He sometimes wore a cap, and sometimes a hat. He usually left one of them there. He wore



also a cloak, or surtout, and likewise left one or the other of these. His clothes were sometimes left in the entry, and sometimes in the chaise, and I put them into the entry.

*Nathaniel Kinsman*, called again.

I reside in Brown street. A few days after the murder, I went out to see from what part of that street I could distinguish the window in the chamber of Capt. White. I could see the window from the south-east corner of Mr. Downing's house, at the corner of Howard and Brown sts. I could see the north window of Capt. White's sleeping chamber, and that of the chamber above. I have no doubt that I might have seen the windows in the chamber of Mrs. Beckford, but my object then was to ascertain whether I could see the window in Capt. White's chamber. There is no building to interfere with the range of the second story. As far west as the next house to Mr. Downing's, which is the one in which I reside, and is 18 or 20 paces farther up, I could still see the window, and also in all the intermediate space. East of the south-east corner of Mr. Downing's house, could not see it.—There is one passage way from Essex street to Brown street. It is not public—it comes through to where the Sun Tavern used to stand, and is nearly as far west as the Church. There are two passage-ways, with a gate to each, which you must open. It would be nearer to go from the Ropewalk steps to Capt. White's house by Newbury street, than through either of these.

*Cross-examined.* I could see the windows very plain, without getting upon the steps of Downing's house.

*Philip Chase*, Affirmed.

Early after the murder of Capt. White, I heard of a suspicious man's having been seen on Rope Walk steps. Thought he might be watching. I went to see if any thing could be seen from steps. A little to the west from the opening of Howard Street, I could see Capt. White's chamber window. I think it was rather more than half way across Howard Street, that I first saw the window. But on Downing's steps could see it very plain. Don't know how far West of the steps I might have seen it.—Could see range of windows.

*Cross-examined.* I don't know which was Mrs. Beckford's chamber, don't know that I examined that. I had no suspicion, of any particular person having been concerned in murder, when I went to look at this window. It was before the Knapps were arrested. I had no suspicions of the Knapp's, before I heard of the Wenham robbery.

*Mary Jane Weller*, sworn.

I know George Crowninshield. About three weeks before the murder, he was at my house. It was in the morning. I went into his room where he slept. Mary Bassett and I found a dagger under the pillow of Mary's bed. He had been sleeping with Mary that night. I asked George why he carried a dirk. He said it was because it had once saved his life, and some Salem fellows were going to flog some Danvers fellows. On the evening of April 6, between 10 and 11 o'clock, he came to my house. I heard the Clock strike 11 after he came in. Saw him there next morning. I went out and heard of the murder. Then went into George's Room and told him. He appeared to be alarmed, and Mary was alarmed. I wanted to go down to Capt. White's to see the body, and asked Mary to go. George was unwilling to have her go. He told me that morning not to say any thing about that dirk; he said every scrape was laid to the Crowninshields. He stayed there all day, and did not go away until the evening. The hour he came at, was between 10 and 11. He had been accustomed to come there at dark, and to go away again, and come back between 12 and 1. He had stayed there once all day, a very cold day. This time, he said he had a bad headache, and laid abed nearly all day. He asked if we went down, not to say any thing, about his being there, and not to say any thing about the dirk. Went away.

about dark, day after the murder. The dirk was about as long as a case knife—it had an ivory or bone handle.

*Cross-examined.* *Counsel for prisoner.* What sort of weather was it the next day?

*Witness.* You know, as well as I do, I am not going to answer any such silly questions. I've told my story and I don't want to be made fun of.

*Hon. S. C. Phillips,* called again. Cannot recollect, that I ever received *five-franc* pieces, they are sold as merchandise, not much used as a currency. They go by tale.

*Cross-examined.* I am a merchant, the usual currency is bills or checks.

*Miss Catharine Kimball,* sworn.

I was at Capt. White's house, on the next day after the murder. I found the Key of his chamber door, under the sofa covering. It is a common door Key. Mrs. Stanley was with me, don't recollect, what she did with it. I think, though I am not positive that Mr. Deland was present.

*Benjamin White,* called again. The last time Joseph J. Knapp, jr. was at Capt. White's house, before the murder, was Sunday before. Mrs. Knapp was with him. Took tea there. Capt. W. not at home. He took tea at Mrs. Stone's, Chesnut Street. Mr. Knapp did not come, till towards night. Mrs. Knapp came first.

*Cross-examined.* The plank, found under the window, came from before the garden gate. It is just beyond the shed. It opens into the yard fronting Essex Street. You go along the yard to garden gate.

*Re-examined.* Plank so near door step that one might step on it from the door.

*Cross-examined.* The small gate was not usually fastened, but generally shut. I was examined by Committee of Vigilance, as if suspected.

*Henry R. Deland,* sworn.

I was at the house of Capt. White, on the day after the murder, after the body was laid out. I saw the key of the chamber on the sofa. We looked for it to fasten the door. Miss Kimball was there. I called at Capt. White's house, on the day before the murder, between half past 12 and 1. Lydia Kimball came to the door.

*Hon. Gideon Barstow,* sworn.

I went with Mr. Colman, on the 29th May, at his request, to the Meeting house, in Howard Street. Mr. Colman went to the further steps of the house, put his hand under the step, and drew out the bludgeon; and said this killed Capt. White. *Five franc* pieces form a small portion of our currency. Do not recollect receiving but one. They are considered as merchandise, and generally pass at a discount.

*Jedediah H. Lathrop,* sworn.

I live in Beverly on the farm owned by Capt. White. He was there on the day before he was murdered. His young man came with him. It was after dinner. He returned home, about five o'clock. The next time before that, he was there on Friday April 2. He came up in his wagon. He then came up after dinner. Usual hour for dining one o'clock. He started to come home, about sunset. Generally went through Danvers. Would go across North Bridge. But whether he went that way, on that day, do not know.

*Jonathan Very,* sworn.

I live with Mr. Osborn, and have the care of his Stable. I know Francis Knapp very well. One time Francis came to me; and asked me, if I would bring him a horse and chaise behind, or near the Court House. He gave no reason for it. I brought the horse and chaise, between the Court House and Mr. Chase's. Nobody got in with him. Do not know which way he went. It was between 1 and 2 o'clock. I had just come from dinner. Some grain was brought up from wharf same day. Had been drawing grain. This was the last day of our drawing it. It

was on the Friday afternoon before, that we began to draw it. I never carried a Chaise to him before.

*Cross Examined*—He asked me to harness Nip Cat, in the chaise, and bring him as soon as I could.

*William Osborn*, called again.

I have with me a bill of the grain, bought of Mr. Hacker. It is dated *second* of the *fourth* month. We began to remove the grain on the same day, and finished drawing it on Tuesday.

*Cross Examined*—Am positive, that the day we finished drawing the grain was Tuesday.

*William E. Hacker*, affirmed.

I made an agreement with Mr. Wm. Osborn for the sale of a quantity of oats to him on the 2d of April last, and he commenced taking them away immediately. He took away the last of them on Tuesday April 6th.

*Cross-examined*. I know that the agreement was made on the second of April and that they were several days in measuring the oats.

*John W. Treadwell, Esq.* sworn.

I am cashier of the Merchants Bank. Five franc pieces are not a common coin—rather an article of merchandise. They are a favorite bank coin, and we generally keep them in the vaults, till we can get a premium upon them. Mrs. Beckford was a niece of Capt. White, an only sister's daughter, and housekeeper in his family. She had two daughters, one married to Joseph J. Knapp, jr. the other to Mr. Davis of Wenham. Capt. W. had nephews and nieces, children of his late brother Henry. Mr. Stephen W. and family were at Boston last winter at Tremont house.

*Cross-examined*. I am one of the committee of Vigilance. The committee consulted Mr. Choate as Counsel. They did not retain any other Counsel, to my knowledge. They did think proper to take an oath not to divulge their proceedings. I do not know how the expenses of the committee were paid. A letter was received from Mr. Stephen W. offering them \$1000—to pay expenses, if their investigations should not lead to the detection of the murderers.

*William Osborn*, called again. I commenced removing the oats, bought of Mr. Hacker on the day I made the agreement, and finished the Tuesday following.

*Cross-examined*. It was on that day that ostler mentioned to me that he carried a chaise to the Court house for Frank Knapp, and I thought strange of it. The horse he had was *Nip-cat*.

*J. C. R. Palmer* called again.

And inquired of more particularly as to prisoner's visit to the Crowninshields on 9th of April.

George asked me at that time if I had heard of the murder, and said they had no hand in it. Richard afterwards asked me if I had heard of the "music" in Salem? He said, people supposed they had some hand in it—they said they should leave home. I told him I thought it a bad plan if they were suspected. George told me he took his dirk down to the machine shop and melted it down; for a committee was appointed to examine houses, and it would be a bad sign to have it found. Richard agreed to meet me at Lowell on the first of May. He said he had to finish some cloths and could dispose of them and get some money and go to New York. He gave me \$5—bill on Newburyport Bank.

*Cross-examined*.—I never have stated that the murder was committed with a hatchet—I said I found a hatchet in the machine shop and threw it into one of two places, did not recollect which. I told Jones I had seen a hatchet and suspected it had been used, because I saw an account in the newspapers that the murder was probably committed with a hatchet—I put it away so that it might be found if called for. It had the handle newly sawed off and had clay on the head of it, but was just like any other hatchet. George said he had melted the dirk because a committee was appointed. I am positive that this was on the 9th of April.

*David Starrett*, sworn.

I live in Wenham and keep a store there. I heard of the robbery of the Knapps, last spring. There was nothing done to detect the robbers. I saw the prisoner at my store on the afternoon before the murder, about 4 o'clock. My store is about one quarter of a mile from Joseph Knapp's house.

*Abraham True*, sworn.

I live in Williams street, pass through Brown street several times every day. I took particular notice, soon after the murder, of Capt. White's house, and the back windows of the two upper stories are perfectly visible from Brown street when the trees are not covered with leaves. I am a retail grocer, do not take a dozen 5 franc pieces in a year.

*Cross examined.*—The windows are not visible from all parts of Brown street, but they may be seen from Howard street and several rods above, westerly. They cannot be seen from the rope walk steps, but can be seen from a point six or eight feet west of the steps, I should think. The western windows of the front chamber may also be seen.

A majority of THE COURT having decided that the confession of the prisoner could not be given to the jury, Mr Webster submitted to the Court an application on behalf of the Government for a re-argument of the question.

THE COURT were very clearly of opinion that it would be proper to hear an argument, not being unanimous in the opinion already expressed.

On the part of the Government, it was contended, that the confessions of the prisoner were proper evidence to be submitted to the jury, on several grounds.

1. The assent to J's confession, which was asked of the prisoner, was not such a confession as comes within the protection of the principle of law.

2. What was said by Phippen Knapp to the prisoner, even if said with a view to draw out a confession, is not such a threat, or promise, or encouragement as the law requires.

3. The hope of favor, whatever it was, was addressed exclusively to obtaining his assent to J. J. Knapp's disclosure, and had no application expressed or implied to facts within his own knowledge.

The Counsel for the prisoner confined themselves chiefly to a reply to the arguments urged by the Counsel for the Government, contending that

1. The prisoner was given to understand that his brother's confession was to be made only on condition of his assent; and if he assented, then he would have a hope of pardon.

2. Consenting that his brother should confess was virtually his own confession.

3. If therefore any improper inducement was held out to him to consent, not one word of any subsequent confession can be evidence.

To these points they cited 2. Stark. 28. Hawks. P. C. B. c. 46-2 36. Hob. 294.

THE COURT adhered to their former opinions, stating more fully the grounds of them.

After this decision, Mr Webster stated to the Court—that the question appeared to be not fully settled, and proposed to call the witness and ask him certain questions of a different character from those already proposed to him. He proposed to ask the witness whether the prisoner did assent to J's confession, suggesting that it would probably appear that he never did assent.

WILDE J. That would materially vary the case.

MORTON J. It would be most important evidence. My opinion was founded on the supposition that he assented.

Dexter. It seems to me that the time is passed when the witness can be called. He was asked to state all the conversation that related to

encouragement and he said he had done so. To call him now would be a measure of severity to which the prisoner ought not to be subjected.

**WILDE J.** It is much to be regretted that the question now proposed to be put had not been asked. Both Judges founded their opinion upon the supposition that the prisoner's assent was given. If such were not the fact, if the encouragement did not produce its effect, we see no reason why his subsequent confessions should not be admitted.—The Counsel could have no intention in pursuing this course. Feeling a great degree of confidence in the admissibility of the evidence, as the facts stood, it probably escaped attention. This course may be an inconvenience; but we are all of opinion that we ought to hear the witness, to ascertain if there is any important fact not before the Court.

*Mr Colman, called again.*

**WILDE J.** It becomes necessary to ask one question which was not proposed to you before. The fact the Court wish to ascertain is, whether, before the confession, there was any assent to the proposition made to the prisoner by his brother Phippen Knapp?

**Ans.** There was neither assent nor refusal.

**MORTON J.** The fact, upon which my whole opinion turned, that is, the prisoner's assent to his brother's confession, is varied. It is now said that there was no assent. The burden of proof is upon the prisoner to show that the case is within the exception to the general rule. As the evidence now stands, it does not appear that there was any improper influence. There is no evidence of assent.

*Mr Colman goes on.*

\* I had been informed that the murder was committed at a very early hour in the evening—I thought it incredible, and asked the prisoner at what time it was done. He told me between 10 and 11. I had been incredulous about there having been but one person in the house. He told me, that Richard Crowninshield alone was in the house. I asked him if he was at home that night. He said he went home afterwards. I asked him, in regard to the weapon—the place where it was concealed. He told me under the steps, [as before] and said that if I went there, I should find it. I asked what became of the dagger or daggers.—I am not certain which. He replied that it or they had been worked up, at the factory.

*Cross examined.* The principal part of the conversation was between Phippen and Frank. I went into the cell a little before 7 o'clock, and suppose that I came out at 1-2 after 7. This was Friday afternoon 28th of May, I first visited him—I had never spoken to him before. I had some conversation with him at another time at his window. I went immediately from the cell of Joseph to that of Frank. Phippen was not in Joseph's cell with me. While I was in the latter, some one knocked at the door.—I looked out at the scuttle of the door and saw Phippen—he asked to come in. I told him 'not yet.' I had not finished my business with his brother. I went to Boston to see the Attorney General. I started for Boston about 10 P. M. and arrived at the Attorney General's between 12 and 1 o'clock.

I was at Joseph's cell 3 times on that day, and again on the day following—once with Dr Barstow, and Stephen C. Phillips, Esq. I recollect beyond a doubt, which time I went from Joseph to Frank's cell—it was after the 3d visit to Joseph's, and the same evening, on which I visited the Attorney General. Frank was told that Joseph had decided &c. [as before,] and nothing more. I did not hear it stated, that Joseph had made a full confession. I never said that I would not mention, what Joseph had told me unless Frank consented to the disclosure. I never stated to Frank that there was no chance, if both refused to confess. I never told him that there was evidence enough to hang both. He never stated, that he had no confession to make. I already knew that the club was under the church steps, but which steps I did not know, until Frank told

me. I don't recollect telling the prisoner that Palmer was arrested, or that application was made for his pardon. I don't recollect that it was stated to Frank that Palmer would receive a pardon, though I think it not improbable, that it was stated. The jailer had called and told us that it was time to go, and repeated his call; then Phippen appealed to me, and Frank said, "I suppose you will use your influence," &c.

I said, this is your deliberate assent (to Joseph's disclosure,) he said, 'I don't see that it is left for me to choose. I *must* consent.' I have stated all that I so well recollect, as to be willing to state under oath. I think I stated to Mr Stephen White in Boston, at the Tremont House, and also at the office of Phippen Knapp, when Mr Dexter was present, that Frank had confirmed Joe's confession.

Phippen Knapp was present during the whole interview and might have heard it. I didn't tell Mr Stephen White that Frank had told me where the club was. I have no recollection of telling any one where it was, till I had found it, except that I spoke of it to Phippen Knapp as we came up from the Jail. I told him that I should rely upon his honor that he should not go for the club.

On Saturday, 29th May, a little before 1 o'clock, I found the club. I went to Frank's cell at the request of Phippen Knapp—his conduct was an example of filial and fraternal affection. At the request of Joseph, when I went out of his cell, I asked his father and brother Phippen to go to him. Frank did not tell me that he knew where the club was, of his own knowledge, or that any one told him it was there. He answered the question directly.

Here the testimony on the part of the Government closed, and the defence was opened by Mr. GARDINER, junior Counsel for the prisoner.

Mr. GARDINER, in introducing the grounds of defence, which he expected to establish for the prisoner, referred to his situation as being peculiarly embarrassing. His connexion with the prisoner had been but of a few days, and he had been, perhaps unfortunately for the prisoner, substituted for another gentleman, who was fully competent to do justice to his cause, by reason of his intimacy with the friends of the prisoner, and his familiarity with the neighborhood of the place where the murder was committed. He readily assented to the truth of the remark of the Attorney General, that this murder was most atrocious. He thought that the man must be very bold, who would deny it. But he cautioned the Jury not to let the enormity of the crime, and the general alarm which it excited, prevent a full and free exercise of their judgment. He urged them to remember, that the presumptions should be rather for, than against, the prisoner, particularly under the peculiar circumstances in which he was placed. He was a young man, about 19 years of age, brought up in the bosom of this peaceful community, and now, for the first time, placed at the bar of his Country, and to be tried for his life. The whole community was in a state of the greatest excitement, and ready to fix its suspicions upon any individual, who might be singled out. The Attorney General has informed you, that even the honorable relation of the deceased did not escape suspicion. Reports, the most unfounded, the most calumnious, have been set in circulation against even him. Large rewards were offered by the State, the Town, and the family of the deceased, for the detection of the murderers, and a most extraordinary tribunal was formed, under the name of a Committee of Vigilance, consisting of *twenty-seven* persons, and these selected from the most respectable portion of the community, holding their nightly sessions in secret, and despatching their agents through the State, and beyond the State. He likewise referred to the manner in which the prosecution had been conducted. It was backed, he said, by nearly all the talents of the bar of the County. Even the Legislature has been stirred in this matter. A special law has been passed for the very purpose of this trial. Justice was thought to move with too

slow a pace. Both the Attorney and Solicitor General were directed to attend. But they were thought not enough, for besides all the Bar of this County, there was brought into the Cause a gentleman, whom he considered as the most eloquent orator in his age and country. He came fresh from his victory at the South, with his brows wreathed with the laurels he had won in the Senate Chamber, to overpower the Jury with his eloquence, and to "nullify" the prisoner's defence.

Mr. Gardiner again alluded to the deep and general sensation, produced by this atrocious murder, particularly on account of the age and station in society of the victim of the assassination, but it was the right of the prisoner to ask, that the law should keep the even tenor of its way, whatever be the station of the party.

He called the attention of the Jury to the state into which the public mind had been thrown by the publication of the Confession of one of the persons implicated. So determined seemed to be the community to establish the guilt of the persons accused, that he might almost say, it was hazardous for him to appear in the defence. The cry of the people is for blood. He considered it truly an alarming state of things, if to be accused, was to be convicted, if rumors, generated by suspicion, were to be the evidence upon which the life of the prisoner was to be put in jeopardy. But he had no fear on this account. He did not despair of a fair trial, even in this case. He recollected other periods of violent excitement, when the law interposed her shield, to protect the accused against the influence of popular feeling. He referred to the cases of Selfridge's acquittal, and to the trial of the British soldiers, who were concerned in the Boston massacre.

He then alluded to the strong biasses, which might be supposed to have some influence upon the minds of the most honest witnesses in this case. There is a danger in human testimony, in human judgment. Witnesses testify under mere impressions. It is almost impossible that the imagination should not, in some degree, aid in filling up the outlines of fact. These considerations should be felt by the Jury, in bringing their minds to the weighing of the testimony in this case. The prisoner's awful situation required the Jury to divest themselves of all prejudices, and to shut out from their minds every thing concerning the cause, which they had not heard from the witnesses in the Court-room. It was their duty to try the cause, precisely as if they had never before heard of the murder, and if in coming to a result, they should be in the least degree influenced by out door impressions, they would violate their oaths. The evidence brought against the prisoner, should be conclusive. The Government is bound to prove, beyond all doubt, that the prisoner is guilty in manner and form, in which they have charged him.

He then distinguished the several classes of offenders connected with the crime of murder. *First*, he who strikes the blow, being the principal in the first degree. *Second*, he who is aiding and abetting, being the principal in the second degree. *Third*, he who hires and procures, and is considered the accessory before the fact. All these are subjected to the same punishment. How was the prisoner charged in the Indictment? *First*, as the person who struck the blow—next as being present, aiding and abetting the person who struck the blow. This person, in some of the counts, is alleged to be Richard Crowninshield, jr., in others a person unknown. This is the distinction of the Common Law. He who is a principal in the second degree, in England, is, under the Statute, an accessory before the fact. The Government was bound to prove, that the prisoner gave the blow, or was present, aiding and abetting the murderer. He thought the real inquiry was, whether the prisoner was there, aiding and abetting the murderer. The evidence which the Government had produced, is of a very weak nature, and is liable to great error. They first attempt to prove a conspiracy; then, in support of that, they show

you, that the murder was committed—that three men were in the vicinity of the place of the murder, at the time it was committed. They also show a combination of a great number of facts. But all these avail nothing, unless they bring you irresistibly to the conclusion, that the prisoner gave the blow, or was present, aiding and abetting the murderer. He stated that these circumstances are so connected together in this conspiracy, if the Jury should come to the conclusion that one is untrue, the whole case must fall to the ground.

He then referred to one or two cases of circumstantial evidence, as illustrating this principle. (The case of the uncle, mentioned by Lord Coke. 1 *Stark.* 502--3 & 5.) Even when a party has confessed, there are cases which show that innocent men have been executed upon their own confession.—(2 *Stark.* 43, and note. 4 *Bl.* 357.)

The whole evidence of the conspiracy rests on two conversations. One, overheard by Leighton, between the prisoner and his brother, at Wenham, the other heard by Palmer, between the Crowninshields. So far as these conversations tend to any thing, it is to disprove the charge. As to the weight of this testimony, he intended to show that these witnesses were not entitled to credit. The Government having proved a conspiracy, they prove the murder, and ask you to infer, that it was done in pursuance of a conspiracy. Their whole evidence, if it proves any thing, shows the prisoner to have been an accessory before the fact. The circumstances of the club and dirk might have been communicated by others to the prisoner. All the other circumstances in the case afford no presumption that he was aiding and abetting. As to evidence, relating to personal identity, he referred to *Crow's* case, in the Appendix to Phillips's Evidence, p. 78. Sir ——— Davenport's case in State Trials.

The only question is, was John Francis Knapp constructively present? Even if he were in Brown-street, he was not present, except by a mere fiction of law. To make a man liable as constructively present, he must be in a capacity to render assistance, and must be there for that purpose, and must actually assist. To show that the man in Brown-street could not be considered in law, as present, he referred to some cases in the books, relating to the subject of constructive presence. He stated, that no person, knowing a felony, can be said to be present, at the commitment of felony, unless he be where he can aid, with the intent and ability concurring, and is actually aiding, at the fact. In this, as in other questions of law that have arisen, there is not so much difficulty in ascertaining the principle, as in applying it. (He cited 2 *Stark.* 7, 8. *Charge of Chief Justice Parker. Foster,* 350. 1 *Hale,* c. 34, p. 439. *Hawkins,* b. 2. c. 29. *Russell,* 29, 627, 1025.)

Lord Dacre's case is better reported by Moore, p. 86. 2 *Stark. Ev.* 7, 8, and cases there cited. 1 *Hale,* 533. 1 *Hawkins,* 34. *Russell,* 1025. 1 *Hale,* 463. *Russell,* 325. 2 *Hawkins* (442) b. 2, c. 29. S. 10. *Aaron Burr's* case. • 4 *Cranch,* 490. *Trial,* 426.

The whole tendency of modern cases on this subject has been to narrow the principle. *Russell* and *Ryan,* 343 and 25. *King vs. Sowers.* Same 99. *The King vs. White.*—Same 113, 363. *The King vs. Stewart & Dickens,* 421. *The King vs. Kelley.* *Russell,* 22, new ed.

Mr. Gardiner went on to state that they proposed to introduce evidence to shew that the man, seen in Brown-street, was not the prisoner at the bar, but some other person; that the prisoner was in a different place during the evening; and that Brown-street was not a situation in which aid and assistance could be given to the murderer.

Mr. Dexter stated that there was one question which he wished to present to the Court, and that was whether principals in the second degree at the common law, were not made accessories before the fact, by our Statute of 1784, c. 65, and entitled to all the privileges of accessories before the fact, in the form and time of trial. This Statute is entitled "An



Act against accessories to crimes and felonious assaulters," and describes principals in the second degree at the common law, and declares that they shall be considered as accessories before the fact. He cited *Stat. 1804*, c. 123. This Statute is not repealed by the general repealing Act of 1805, c. 88. And the law does not favor repeals by implication.— 2 *Cranch*, 23. 386. 3 *Wheat*. 631. 5 *Wheat*, 96. 6 *Dane*, 588.

The Act of 1804, above cited, is consistent with that of 1784; and the law does not favor repeals by implication. Note to *Stat.* of 1784, c. 65. *Russell* 30, n. 31. 3 *Mass. R.* 253. 17 *M. R.* 92. 1 *Paine*, 400.

The *Attorney General* and *Mr. Webster* said the Statute of 1784 was virtually repealed by the Statute of 1804, and that if it were not, the description of accessories before the fact, in that Statute, was not the common law definition of a principal in the second degree. The words "being present" are not used in that Statute. 6 *Dane*, 588—9.

The Act of 1784, c. 65, means being absent. As the law stood when that Act was passed, a man who should hire, procure, abet or assist, was an accessory. A man who should abet, &c. "being present," was a principal in the second degree.

The witnesses for the prisoner were then called.

*Jona. P. Saunders, Esq.*

The distance from Brown-street to Essex-street, through the garden of Capt. White, is about 295 feet.

I have no affidavit, made by J. C. R. Palmer, before me. I saw it last in the possession of Palmer. He had it when I left his cell. It was sworn to before me. I cannot tell in whose hand writing it was; don't know how much it contained. I received it folded, with Palmer's signature, and did not see its contents, but merely administered the oath. I have never seen it since. I don't know in whose possession it is now.

*Daniel Bray, Jr.*

I have stated that when I first saw the second man, he was in the middle of the street. I have not examined to see which way he could have come. If he had come from the north side of the arched gate of the Common, I could have seen where he came from, but not if he came from the south side. I could have seen him 15 feet farther south than I did. There are several paths across the Common, leading to both sides of the arch. I first saw this man 100 or 150 feet off. I could not tell whether he came round the corner or across the Common.

*Cross-examined.* From where I was I could see any one come out either side the arched gate. If the man had come round the corner, on the side walk, I could not have seen him until he was within 4 or 5 feet of the other man at the post. I don't think I saw him when he first came in sight. The post is 10 or 15 feet from the N. W. corner of the house. When the men were standing at the post, the one most westerly was perfectly in sight, the other could be seen by pressing my face hard against the glass.

*Nehemiah Brown.*

I was in Palmer's cell when he was sworn to a paper. I don't know what became of it, but think that it was left with him.

*Joseph Burns.*

Frank Knapp's dirk had a plated handle, which looked like silver. I am not certain whether or not it had a guard. It had a cross piece on the handle. It was not drawn. I don't know how long the handle was.

*Wm. H. Allen.*

I have known Frank Knapp from childhood, and have been intimate with him. I can't say whether he had a dirk before the Wenham robbery. The first time I saw it was about the time that dirks were selling in Salem. I have no dirk, myself, but I have known a few young men who have had them—this was sometime after the murder. [He identifies the dirk shewn him.] This was Frank's. Mr. Newhall made it for him.

*Benjamin Leighton.*

Frank's dirk had a gilt handle, with a little jog to prevent its going in to the scabbard. The one produced looks like it.

*Dudley S. Newhall* sworn, and dirk shewn him.

I was making this when prisoner came into my shop and wished to purchase it, and I sold it to him on the day before the Wenham robbery. I was making it for my own amusement. It was several days before it was delivered, that he said he should like to buy it. This is not my regular business—I am a Jeweller. There was a particular demand for dirks at that time.

*William Peirce*, sworn.

My usual dress at the time of the murder was similar to prisoner's. It was a plaid cloak and a black glazed cap. This was a common dress.—Almost all the young men wore glazed caps. Before the murder, it was not usual to wear dirks. Since that time many use sword canes, but I don't know as to dirks.

The appearance of my cloak was very different from a camblet one—it was a dark green color and shaded.

*Cross-examined.* I was not on the Rope Walk steps on the night of the murder, but I was in Brown street, for I live there. I don't know what time—I did not stand leaning over a post.

*Asa Wiggin*, sworn.

I am a Tailor. *Camblet* cloaks were the most common last winter.—From the 1st of September to April, I made 24. I did not make any plaid cloaks last winter. I made as many *mandarins* as I did cloaks.

*Israel Ward, jr.* sworn.

I am a tailor, and made about 50 cloaks last winter. Two thirds of this number of blue and brown imitation camblet—the other third principally of German camblet. I made also a few of cloth, and two or three of plaid.

*Cross examined.*—I have made clothes for the prisoner, and between the 20th and last of January I made him a frock coat, of olive or dark brown color, single breasted, snug about the body, and quite full in the skirts.

*Re-examined.*—I have made similar garments for others—probably from the same piece of cloth. I did not make so many *mandarins* last year as I did the year before—then I made about 30. The prisoner's frock was made in the fashion of the day.

*Stephen Osborne*. sworn.

I am a hatter, and live in Salem. Within the last year I have sold 1600 or 1700 head coverings—more than 500 caps, of all kinds, within the year ending about three weeks since; and of glazed and leather caps, 200 in all. I know the cap produced, and sold one like it to the prisoner, as much like it as two articles can be. I have sold 200 of the same general appearance as this, men's and boys. There are other hatters in this town. It was a common article of dress last winter.

*Cross-examined.*—Of this particular kind I sold last winter from 1 to 3 dozen—none of the same kind to boys.

*Re-examined.*—I have sold from 1 to 3 dozen of this kind, but without fur, and the rest of the 200 were of glazed leather, but had not a star like this, on the top.

The counsel for the prisoner here read copies of two warrants against J. C. R. Palmer—one dated the 8th of June, by which he was arrested and committed for further examination, upon the same charge as that against the prisoner; and one of July 10, by which he was committed by the magistrate to answer to the same charge, at the present term of this court.

They then read a copy of a record of the Court of Common Pleas of Maine, of a conviction of Palmer for breaking a shop, with intent to steal—the judgment and sentence, which was confinement to hard labor for two years, in Thomastown State Prison.

*William Babb*, sworn.

I keep a house of Entertainment, called the "Half-way House," between Boston and Salem. I know Palmer, but from the time he was at my house until last Friday I have not seen him. I am not certain when he was at my house; my impression is, that he came there on the 9th of April, and went away on the morning of the 10th. I heard of the murder on the 7th, in the after part of the day, I think. He never slept there at any other time, unless he got into the house unknown to me. My impression is, that it was after the murder, that he slept there. I am not positive that I had heard of the murder before. I know that it was the 9th, because I had a man (George Green) who "took too much," and I turned him away, and he signed a receipt the next morning. Palmer came out while he was signing and asked for his bill, and said he had no money. It was at this time, I think, and the receipt is dated the 10th.

Green was paid for 4 days labor. He worked on the 10th, and left the house on Sunday, the 11th. I am not certain that Green was present. *He is now covered up in the earth.*

Palmer called himself George Crowninshield, and left with me a plaid silk handkerchief, marked with that name, and offered me a note for the amount of his bill, signed George Crowninshield, and said that he should be along in a day or two, and would pay the bill. I asked him if his name was George Crowninshield—he kept his head down very much, and I said, "you don't resemble the family; I know Richard very well—but you may be a younger brother"—he said "it might be the case." I carried back the note and threw it on the desk, because my wife said that it was good for nothing. I went out, came back and never saw the note afterwards. I don't know what became of it.

*Cross-examined.*—The receipt I left at my house. I saw it last Friday. I can't swear that the receipt was dated the 10th, and if it were I can't swear that this was right. But I am positive that it reads 10th. The time of day was 7 or 8 P. M. when he came there, and it was after 7 in the morning, after the usual time of going to work, that he went away. I can't fix the time any nearer. I don't know which way he came. He went to the east.

*Thomas P. Vose*, sworn.

I live in Thomastown, and am commissary of the State Prison. I know Palmer; he was sometime in the prison. This is he now present.

*James W. Webster*, sworn.

I live in Belfast, (Me.) I have known Palmer these eight years. As to his general reputation for truth I don't know that he has any at all. I have always heard a bad character of him. I have heard perhaps an hundred people say, that he would not be believed at all, in any case in which he was interested. His general character is not good.

*William F. Angier*, sworn.

I live at Belfast and was admitted to the practice of the law about a week ago. I have known Palmer 8 or 9 years. I have never heard his general character for truth and veracity questioned.

The *Counsel for the prisoner* proposed to ask the witness if he would believe Palmer under oath?

THE COURT said that was not a proper question. They then proposed to ask, what was the public opinion about him as to other crimes. This question, the Court said could not be put.

They then proposed to ask whether he was not a common liar? This question was ruled to be inadmissible.

They proposed to inquire if it was not the general belief that he had been guilty of perjury?

This question was not admitted.

They proposed to ask, if his general reputation was not such that he would not be believed on oath?

The Court held it not to be a proper question.

*Alfred Welles, sworn.*

I reside in Boston, and import hard ware and fancy goods. I sell *arms*. I have sold small arms, such as pocket pistols and small dirks, in greater quantities within two months than usual. I have had orders from Salem for quantities—from Mr. Johnson. After the murder I received orders for short dirks from respectable persons here and in Boston, as long as I had any left. My drawers were emptied of these instruments once or twice within two months.

*Major Petty, sworn.*

I live in Danvers, about a quarter of a mile from Crowninshield's. I remember being at work for George Crowninshield, trimming a couple of trees. I can't tell whether before or after the murder. While at work, Richard and two young men, whom I didn't know, came up to us, I heard the name of one called Allen. I can't say whether the prisoner at the bar was one of them—one was a man about his size, and one of them had a whip, but I don't know how they came. The trees which I was trimming were within 8 or 10 rods of the house. These young men went towards the house, and George went with them. I can't tell, whether they went into the house. The front door was open. I am pretty sure that I saw two on the steps, but I am not sure who went in. They were gone but a short time, and came back to within one and a half, or two rods, of the place where I was at work—all four together, I heard talking, but couldn't hear what was said. I could if I had attended. I think that George and one of the others went a little before the rest, when going to the house, but I should say not a rod ahead—all four came back together. They staid perhaps 10 or 20 minutes, and then started to go to the factory together. The time of day was, as nearly as I can recollect, after dinner. I can't say whether Mr. Allen was the man.

*William H. Allen, recalled.*

The first time I went, I saw a man at work—it was 6 or 8 weeks before the murder.

*Petty resumes.*

I was not trimming trees in February, merely cutting them away, so that the meeting house might be seen. I should say that this was in April. I can fix the time by the work I was then employed on. I did not see the young man any more on that day. There was frost in the ground at this time.

*Cross-examined.*—This was not in March—I should think that it was in the fore part of April. I don't know whether it was just before or just after the 6th of April. I think I heard George call one of them Allen.

*Ebenezer Shillaber Esq. sworn.*

I have had a conversation with Mr. Southwick respecting the man in Brown street. I enquired of him after the arrest of the Knapps, about the men he saw in Brown street. He told me he recollected seeing a young man there. That he went into Bray's house with him, and that after having got there they saw another join the first. Mr. Southwick said that he could not see so well as Bray could, he said that he thought that the man who came from Newbury street was taller than the man who was in Brown Street.

*Webster* objects to asking what Southwick said except in contradiction of what he has stated on the stand.

WILDE, J. I never knew the rule restricted: what the witness said is to be given at length, and then if any facts differ it will appear.

*Webster.* It must appear that he has stated something inconsistent with what he stated on the stand.

*Dexter.* Southwick stated that the man on the steps was Frank Knapp. The height of Richard Crowninshield may be shewn.

PUTNAM, J. The question should be asked generally. You cannot ask as to any point, to which he has not been inquired of. *Non constat*

that if asked, he would not have given the same account that he has now given on the stand. He ought to have an opportunity of giving his account, before you discredit him:

*Gardiner.* We propose to ask the witness, generally, what description Mr. Southwick gave to the witness, of the persons whom he saw in Brown Street.

*Jus. Putnam.* The witness may retire, if the Counsel for the prisoner desire to ask Mr. Southwick. If Mr. Southwick has given different reasons for his belief, as to the identity of the persons in Brown-street, than what he has given in Court, the fact may be shown.

*Witness.* I don't recollect, whether Mr. Southwick gave me any description of the persons whom he saw in Brown-street. I asked him whether, for ought he knew, the person who came from Newbury-street might not have been Francis Knapp, and the person in Brown-street Richard Crowninshield? He said he could not tell, but for aught he knew, it might be so. I had no conversation with him about the man on the steps. My only object was to satisfy myself, that it might have been Richard Crowninshield in Brown-street.

*Cross-examined.* I was Counsel for Richard and George Crowninshield, when I made the inquiry.

*Mrs. Burns, sworn.*

On the night of the murder of Mr. White, I saw Selman and Chase at my house. It was about 8 o'clock. They came in a chaise. They tied their horse in the yard, and went away. Mr. Burns was not at home. Chase came back again about half past 9—stopped about five minutes for Selman, then took his chaise and went away. Selman came back about five minutes after Chase had gone, and asked for him. A young man was with Selman, at the bottom of the yard. I did not know who it was.

Selman said he expected Chase to call for him there. He then went away, and returned in about a quarter of an hour, to see if Chase had called for him. The last time they were there, the young man that was with him left a message to tell Chase, when he should come, that he should be at Pendergrass's.

*Webster objects to this evidence, as the declaration of a party.*

*PUTNAM, J.* The object of the evidence is, to account for George Crowninshield during that evening. Supposing this young man was he, the Court think this a reasonable mode of proving that he was at a particular place, by shewing that he agreed to be there, and then shewing that he was there.

*Witness resumes.* My husband's stable is in St. Peter-street. Pendergrass's is in SouthSalem, over the bridge, and that was the appointed place of meeting.

*Cross-examined.* I know George Crowninshield. I did not know the voice of the one who spoke to Selman—he did not speak loud, but in a tone of moderate conversation.

*John Needham, sworn.*

I saw George Crowninshield, on the night of the murder, in South Fields, the first time about 7 o'clock, at the News Room, at Pendergrass's. Richard Crowninshield paid the rent for that room. Chase, and a young man, introduced to me as Col. Selman, came in, and George a few minutes after. They stayed there about half or three quarters of an hour, and then went away, all together. I saw them again there between 9 and 10 o'clock. Chase then came alone in a chaise, and George Crowninshield and Selman came on foot afterwards. George was there all the time, except about ten minutes, that I was out. Joseph Burns, Auatin and Osborn were also there, and stayed some time. Chase and Selman went off together, in the chaise, and afterward George, Austin, Osborn and myself came away together. I said that I was going home the nearest way and George said, "I'm going to Mary's, and will go with you." We went by Malloon's Mills. When I got to the gate of our house, at the corner of High and Summer-streets, we parted. This was before 11, because I

went to bed immediately, and soon after heard the clock strike eleven. Mother asked me whom I spoke to at the gate, and I told her George Crowninshield.

*Cross-examined.* At this Reading Room we took many papers, and its general use was for reading. Richard Crowninshield paid for the papers. We had some from Alabama, and the "Truth Teller," from New York. Sometimes we had gambling of all kinds. I should have played, if I had had the means. I was employed to make the fire, keep the key, and light the lamps. Richard Crowninshield paid me, but no particular sum—when I needed a little change, he gave it to me. The rent was \$12 a quarter, and the quarter would have ended the 11th of May, but he did not keep the room, for when the constable came there, he gave it up.

There is a game called props. I have never seen any other played. Ours was not a *gambling house*—a *gambling house is a cheating house*.—There was some liquor kept there sometimes.

*Matthew Newport, sworn.*

I keep a victualling cellar at the corner of Union and Derby-streets. George Crowninshield and Benjamin Selman came there on the night of the murder, between 8 and 9 o'clock, and stopped about 10 or 15 minutes. They inquired if John McGlue had been there.

*Joseph Fairfield, sworn.*

I live in Danvers and keep a public house. I saw George on the evening of the 6th of April about 9 o'clock with Chase and Selman at my house. They stopped there about 10 or 15 minutes, came in and took something to drink, two glasses of brandy and one glass of gin. They came and went in a chaise towards Salem.

*William Austin, sworn.*

I saw George Crowninshield on the night of the murder at Pendergrass's about half past 9. I am a tanner and currier. George Crowninshield came about half past eight. He stopped in Pendergrass's shop a little while, then went into his room. I was there with him—when he went away he went towards Marblehead. He came out with me and John Needham. I and Osborn came over the south bridge. Joseph Burns and two others were there that night besides. I did not know who they were. The clock struck 11 just as I got home. I live in Boston street. I did not know Selman and Chase at that time. It takes me about 19 minutes to walk home from the "reading room." I have walked it since about as fast as I did that evening. Chase and Selman went away five or ten minutes before I did. After they went away, Osborn and I proposed to go. George Crowninshield and John Needham came out when we did. They came immediately behind us—as we turned towards the south bridge, they turned up the hill.

*Benjamin Selman, sworn.*

I saw George Crowninshield on the night of the murder. I came over to Salem from Marblehead with Mr. Chase. We went up to the factory and saw George Crowninshield. Chase wanted to see him, and I wanted to see Clark Read in Salem. We went into the factory and saw George between 5 and 6 o'clock. George wanted to go to Salem to see John McGlue, to get some money. He went with us in the chaise. We stopped at the tavern opposite to Dustin's in Danvers, and then came to Salem. George got out at the post office. Chase and I went into Burns' with the chaise. After leaving the horse at Burns' shed, I then came out and met George opposite the post office. George proposed taking a walk. We went to Pendergrass's and stopped near an hour. We got there about half past 7, and staid till after 8. We then came over into Salem, and went down to the Franklin building on the common, and Chase found a friend there—a female—and went away with her, and said that he would join me in 15 minutes at Burns' stable. I then went with George down to Newport's cellar, and staid there near an hour. George said that he wanted to see Mr. McGlue who owed him some money—

'twas 9 o'clock when we came away, and then came up to Franklin building again. I wanted to see Read, and he said he would go with me. Read's is in Williams street, he stopped at the gate and waited for me there near half an hour. We then went through Brown street to Burns' stable, without stopping in Brown street. We went to Burns' shed and found the chaise was gone. I knocked at the door and asked Mrs. Burn's if Mr. Chase had been there, she said he had been gone 15 minutes. She did not know where. I went up into Essex street in front of the Coffee house and waited a few minutes, and then went over to Central street, when the clock struck 10. George then went over the bridge, while I went and told Mrs. Burns' that I was going over the bridge if Chase called, to tell him George was with me.

When I got there, Chase was there with a chaise, and said he had been waiting half an hour for me, and said he had agreed to be there. I took a cigar and staid till a quarter after 10. We then took our chaise and went home to Marblehead. We left George Crowninshield in the yard and got home 5 or 10 minutes before the clock struck 11. It is four and an half miles from Salem to Marblehead. I have been in Jail 85 days on suspicion of having been concerned in the murder. I had on a hat and Chase had a glazed leather cap.

*Clark Read, sworn.*

I live in Williams street. Mr. Selman came to my house just after 9 o'clock on the evening of the 6th. I was just going to bed and was nearly undressed. He staid there 10 or 20 minutes. I went down to the door with him and saw a person there who spoke to me, and who I thought was Chase. At the time he said Chase would be waiting for him, but did not say that he was at the gate—

*Nathaniel Phippen Knapp, sworn.*

Do you know what has been testified in this case.

*Answer.* I have been told as to one point, as to finding the club.

I have heard something that Mr. Colman has testified—but only casually in the street, and this was confirmed by Mr. Dexter. The person who told me in the street was I believe Mr. Miller. I can't remember that any other person has told me. Mr. Dexter has told me that Mr. Colman had stated that it was by the prisoner's direction that the club was found.

Mr. Dexter at his own request, sworn to make true answers, states

After Mr. Colman had been examined, as I went down stairs the witness met me and asked me if Mr. Colman had said that he found the club by the prisoner's direction. I answered immediately that he did.

P. Knapp resumes. I heard nothing else—not a word.

*Mrs. Sally Needham, sworn.*

John Needham is my son, he came home on the night of the murder about 15 minutes before 11. I heard him speak to some person at the gate. I asked him who he was talking with. He had come into my chamber to light his lamp.

*Cross-examined.*—I knew the time because I have a watch in my chamber, and heard the clock strike, and I looked at the watch when I went to bed.

*(N. P. Knapp resumes.)* I was present at a conversation between Mr. Colman and the prisoner, at his cell. I went to the prison with Mr. Colman, and went to my brother Jo's cell. When we came out from there, I went to my brother Frank's (the prisoner's) cell. As I was going in, I observed that Mr. Colman looked anxious to be admitted, and I asked him if he would go in. He said yes, and came in. There was a conversation at the door of Joseph's cell. He said, Mr. Knapp, I wish that you would not disturb the club, I will get a witness, and go and get it myself, for my own security. After we went into my brother Frank's cell, I addressed him in this way—"Mr. Colman says that the Committee have evidence enough to convict you and your brother, that the only chance of

salvation is for you to confess; that Palmer has applied for a pardon, on condition of being a witness, and that a promise of pardon has been despatched to him from the officers of Government; that the messenger would pass through town that evening in the mail stage, and that if they did not confess before the mail stage passed thro', it would be too late; that if either of them would confess, the committee would stop that message, and apply for a pardon in favor of him, whichever it might be. I told him, also, that the sub-committee had severally assured my father that Palmer knew every circumstance relating to that transaction, and that the only chance to save his sons was to induce them to confess. I then asked Mr. Colman if what I had related as coming from him was not true? He said yes, and then went on to state, "I have seen your brother, (addressing prisoner.) I have made him these assurances, and offered him a pardon in case he would be willing to confess. I also assured him that if he committed any thing to me in confidence, it never should be revealed, unless he should choose to become a witness. I am authorised by the Committee to offer this pardon to either of you." I then said, "Mr. Colman thinks Jos. had better confess, for if you should be convicted after his confession, you would have a greater chance of pardon than he would." I applied to Mr. Colman, and asked him if he did not think so. He said "yes, undoubtedly—your youth will be very much in your favor—your case will excite great sympathy, especially if it shall appear that you were persuaded to do what you did by your elder brother." He then said, "but I don't insist on the preference, I leave that for you to settle between you. My brother hesitated, and said nothing. Mr. Colman then said, "you know the condition, if you stand a trial, you will both be inevitably convicted—if either of you chooses to confess, he will save himself. If Jos. confesses, and you should be convicted, you will have a good chance of pardon, but if Jos. should be convicted on your confession, his chance would not be so good. At all events, your chance will be much greater than if you stood a trial, and were convicted on Palmer's testimony." He then reminded him that he had but a few moments to choose. My brother then said, "I have nothing to confess. It is a hard case; but if it is as you say, Jos. may confess if he pleases. I shall stand trial." I recollect nothing more than that. Nothing was said about the club in Frank's cell, in my presence and hearing. This conversation in the prisoner's cell, was on Friday evening after the arrest on the 28th of May. Mr. Colman stated to me that he had been at Jo's cell that day two or three times. Nothing was said in my presence or hearing about the time when the murder was committed. After he had been into Jo's cell, before his third visit, Mr. Colman said he made those visits, by request of the Committee, not by request of me, or any of my friends, but against our wishes. When we came out of the cell, Mr. Colman said he was going to see the Committee. Nothing further was said at that time. He said, at 8 o'clock the same evening, that he was going to Boston with Mr. Treadwell, to see the Attorney General. This conversation, I think, was at my office. I next saw Mr. Colman on Saturday forenoon, near 10 o'clock, this side of the Half-Way-House—he was coming to Salem alone in a chaise. When I met him he asked me to leave my chaise and get into his. Henry Field was with me. I got into Mr. Colman's chaise—he then told me he had seen the Attorney General, and showed me a promise of pardon, or of a *not pros.* if confession should be made, to either of the prisoners, excepting one who was named, Richard Crowninshield, Jr. He asked me to turn back and go down to Salem with him,—said he was going to see my brother Joseph. I told him I could not go back then, and asked him not to go to see my brother without me. He said he would not go without me; he said he would wait till I returned. He then said, I am not sure I got that story of the club from Joseph or Frank, but I believe from Joseph. I told him he did not get it from Frank, for he said



nothing about it. He then said he did not know but that he had been misunderstood about this by Mr. S. White, and asked me to take a note to him, to correct the impression. Mr. White was then in Boston. Mr. Colman said I should find him in the Senate chamber. It was a short note, written in pencil in the chaise. I took the note—went to Boston—went to the Senate chamber, and did not see Mr. White. As I was hurried in my business, I returned to Salem, and think I gave it back to Mr. C. I arrived in town about 3 o'clock, and went to the door of my brother Joseph's cell, and requested admission of Mr. Colman, who was in the cell at the time. He refused, and said I could not come in. Mr. Brown (the jailor) allowed me to ask the question, though he would not admit me. Mr. Colman said "You cannot come in, I have not finished my business," or something to that effect. He said he would meet me at my office as soon as he had done. He came to my office, bringing with him a paper, about 5 o'clock—it may have been a little before or a little after—this was Saturday. I asked him to shew me what he had in his paper; he said he would not, except in presence of witnesses. He said he would go and get some witnesses and then read it to me, or go down and see the committee and read it before them. He said he should be at Dr. Barstow's, and when he was ready he would send for me. In a little while Dr. Barstow's son came to me and I went down. I found Mr. Colman there with Dr. Barstow, Mr. Merrill, and Mr. Saltonstall. He then said he could not shew it to me, for the committee thought it not proper that I should see it. I believe nothing more was said between me and Mr. Colman.

I met Mr. Colman the Monday following, in Central-street, in a chaise. He stopped his chaise, and beckoned to me to come to him. I went. He said, you may make yourself easy on the subject we were conversing about last. I have seen Mr. Stephen White, and have not been misunderstood. The next was at my office, three or four weeks after; a week after the death of Richard Crowninshield. I believe it was the 20th of June. Mr. Dexter was not present when the conversation began. Mr. Colman said, I have called on you, Mr. Knapp, to refresh my recollection of the interview with your brothers. I may be called as a witness, and I wish to state the conversation accurately. After some observations, I don't recollect what, he alluded to the club. I denied that my brother said any thing about it. He said, well, you will probably be a witness, and will have an opportunity of giving your account of it. This was said with considerable excitement, when Mr. Dexter opened the door. He tried to calm Mr. Colman, who said he had been contradicted; but that he did not surely get the information from Joseph, and he would go and get some witnesses, and ascertain how it was.

My father failed 7th of April. The instrument is dated 7th of April. I was occupied in preparing it on the evening of the 6th. My brother, the prisoner, rode less after the failure. I had cautioned him about it in consequence of the failure. This was after the 7th of April. He was in the habit of riding much. My brother wore a glazed cap, like this in every particular. I remember the dirk—I never saw my brother have any before this.

I was up all night of the 6th of April, preparing, with Mr. Waters, my father's assignment. I went home at half past one o'clock. I left my office at sometime after nine, with my father. I went to Mr. Waters's house, stayed there till a few minutes before ten, then went with Mr. Waters to his office, in Washington-street. My father went home. A few minutes before ten, went to Mr. Waters's office. We were at his office 10 minutes, perhaps. We did nothing but strike a light and get a book. From there we came directly down Essex-street, to go to Mr. Waters's house again; on the way, we stopped at my own house to get my umbrella. It rained when we left Mr. Waters's office, and when I got to the house. When I came out, it had ceased raining. I went to Mr.

Waters's house, and stayed there till one o'clock. I got from the house, also, a key of one of the doors, that I might come in from Mr. Waters's house. I went directly home. When I got home, I found my father in the entry—he had just come in himself. I told my father he had better retire, and I sat up all night, and finished my writing. I saw nothing of the prisoner during the night. I saw him the next morning, about 8 o'clock.

Frank's usual hour of going to bed was 10 o'clock. He was the most regular person in the family in this respect. My father's house is in Essex-street, a few rods below Newbury-street. I passed Mr. White's house at 1-4 past 10, and saw a light in his chamber. I heard the clock strike 10 minutes before we arrived at Mr. Waters's office—stayed there about 10 minutes. I believe I called Mr. Waters's attention to the light, but I am not certain. I was in Derby-street or the street above it, when the clock struck 10.

*Cross-examined.* When I went to the prisoner's cell with Mr. Colman, I went from my brother Joseph's cell. We went to Joseph's cell together, to make the statements to Joseph, that the Committee had made to Mr. Colman, to see whether he would confess. This was on Friday evening, between 6 and 7 o'clock. I had not been to the cell of either brother before. We both went into Joseph's cell, and a conversation was had about confessing. I don't know whether Joseph agreed to become a witness for the State.

It was not positively agreed that he was to become a witness for the State; it was agreed on certain conditions. The conditions were, that he should have the preference. It was not agreed that he should have the preference, unless his brother chose that he should. I understood that Joseph's becoming States' witness depended upon Frank's consent. Mr. Colman said he should go to Joseph's cell at this time, and I asked him to let me go with him, to which he agreed.

I went into the prison with him. I cannot recollect from what place. When I left Joseph's cell, it was my purpose to go to Frank's cell. I presumed Mr. Colman intended to go out of the prison, but as I entered the door of Frank's cell, I thought he wished to come in, and I asked him to come in. I went to Frank's cell from Joseph's, to see if he had any objection to taking a trial, and suffer his brother to take the benefit of Mr. Colman's proposal. It was agreed in Joseph's cell, that I should go to Frank with this message. There was no agreement about the time or place to see Mr. Colman, and report Frank's answer.

If Frank assented, I don't know that I was to do any thing. I went to see what he had to say about it—don't recollect what I was to do if he assented—don't know that I was to report to Mr. Colman. I knew Mr. Colman was going to the Attorney General or the Committee, but don't recollect how he was to be informed of Frank's assent. I don't remember whether before going to Frank's cell, Mr. Colman said any thing about going to the Attorney General. It was a very few minutes after I left Joseph's cell, before I got into Frank's. During this time, we had the conversation concerning the club. I had been in Joseph's cell all the time that Mr. Colman had been there—heard all the conversation between Joseph and Mr. Colman. I was there 10 or 15 minutes; at this time, I presume, I heard all that was said, because nothing was said in a whisper. There was an understanding that Joseph should turn States' evidence, but if Frank did not assent, it should be offered to him. Joseph would not accept that offer unless Frank would assent. I understood he was determined not to assent to Mr. Colman's proposition, unless Frank were willing—don't recollect how it was arranged that Mr. Colman should find that out.

When Mr. Colman told me not to get the club, I was in front of the door of Joseph's cell. I heard nothing said about the daggers, in Frank's cell—do not recollect hearing any thing said about its being a hard thing

that Joseph should "have the privilege to confess, since the thing was done for his benefit." Frank said it was a hard case—a hard alternative. I will not swear that he did or did not say this. I don't recollect that it was said that it was a hard case, since the thing was undertaken on Joseph's account. I will not swear that it was not said—I will swear that I did not hear any thing said about melting up the daggers. There was no secret conversation between Mr. Colman and Frank. I have no doubt that if it had been said "the thing was done on Joseph's account," I should have heard it. I can swear I did not hear any thing said about its being done on Joseph's account. I heard nothing said about its being "a silly business," nor that it would bring him into difficulty. I heard nothing said about the time my brother went home on the night of the murder. Mr. Colman was standing up, and I sat down near my brother. Nothing was said about the dagger, or melting up the daggers—nothing was said about the club—nothing was said about its being a "silly business;" nor that the business was undertaken on Joseph's behalf. I will not swear that this was not said.

I will not undertake to swear that he did not say "I told Jo it was silly business, and would only get us into difficulty." I will swear that he did not say that he went home after the murder,—or "afterwards." I can swear that there was no conversation about the time of the murder—that Mr. Colman did not ask him about the time of the murder—that nothing was said about the dirk, and nothing about the club. I heard nothing said then about Howard street Church steps. I did not hear any body say any thing to Mr. Colman that day about the bludgeon. I did not hear any thing said in Frank's cell about it by him. Mr. Colman told me he trusted to my honor not to get the bludgeon. I am not certain I heard any body say to Mr. Colman where the club was. I think it must have come to my knowledge in my brother Jo's cell that the club was under the steps. I did know it when I came from my brother Jo's cell. I think I must have got the information from Mr. Colman. I never knew under what particular step this club was—nor under which flight of steps. I never have known under what steps it was found. When we came away he said he should go to see the Attorney General. This was after we left Frank's cell. It was not said before. I recollect that I was to go and ask Frank's assent, but not how, I was to communicate the result to Mr. Colman. Nothing was said by Frank about the person who proposed the murder—nor how many were in the chamber at the time. I expected Mr. Colman was to testify to just what happened, and to be called myself to testify to the same conversations. I did expect to differ from him about the club. I understood that only one brother had hopes to be admitted as a witness by confessing. Mr. Colman offered pardon to Frank, that he might have the opportunity, if he chose, to become a witness. Mr. Colman left it to them to agree which should turn State's witness. It had not been agreed that Jo should have the preference. If Frank did not assent, Jo was not to be State's witness.

When I met Mr. Colman, coming from Boston, he stated to me that he might have made a mistake about the club, and wished me to take a note to Mr. White. I did not ask Mr. Colman not to mention that Frank had confessed about the club. The conversation was introduced by him. I did not read the note. I thought it important to correct the error, but I did not inquire where Mr. White lodged. I went to the Senate Chamber, but the Senate was not in session—I went into the other House, he was not there. I had particular business and could not wait. I first heard of the murder between 6 and 7 o'clock the next morning. I met a friend of mine, who informed me that Mr. White had committed suicide. Albert G. Browne told me.

Something has been said about my father's house being broken open. The prisoner said he found the room doors open, and the closets and desks open. Said he did not know who had done it. I don't know but

my brother first discovered it. We never missed any thing from the house.

My brother, the prisoner, had been an acquaintance of the two Crowninshields 3 or 4 years back. He had been to New York with them.

*Re-examined.*—The day I met Mr. Colman near the half-way house, I went to Boston to see counsel for my brothers. I was in a hurry to get back to Salem to see Mr. Colman. I did not go to bed at all on the night of the 6th April. The prisoner belongs to Dr. Flint's society, who has visited him in prison. Before I got into Salem, when coming from Boston, I met a friend who had a fresh, smart horse. I exchanged with him that I might get home sooner.

*Cross-examined again.*—I wanted to get to Salem because I was afraid Mr. Colman would get in to see my brothers; they had had no counsel. I was not directed by counsel to tell them to say nothing. I had fixed an hour to be in Salem (think 2 o'clock) with Mr. Colman, as he wished me to be back, and I told him I would be in at that hour if I could. When I met him he wanted me to turn about; he agreed not to go to see Joseph till I got back. My reason for asking him not to go till I got home was I chose to go with him—that is sufficient. I wanted to see that he conducted fairly. I wished to be satisfied that the arrangements would be safe. I did not wish to take counsel on that point. I wished to be present when the letter from the Attorney General was offered to Joseph. Mr. Colman agreed to wait till my return. When I returned, I found Mr. Colman at the cell.

*Solomon Giddings, sworn.*

I reside in Beverly and was in Salem on the night of the murder. I passed Mr. White's house about 11 o'clock and saw and heard nothing, which attracted my attention. I was going from the wharves to Beverly, and the clock struck 11 while I was in Essex street.

*William F. Gardner, sworn.*

I live in the next house to Capt. White's. I passed there 25 or 30 minutes after 10 in coming from Mr. Deland's, which is the next house to Capt. White's on the other side and on the corner of Essex and Newbury street—there was a party there that night, which was just breaking up at that time. I heard no noise, nor any thing, which attracted my attention. Mr. Deland's windows look into Capt. White's front yard. Then 3 persons with me.

*Stephen D. Fuller, Surveyor, sworn.*

The plan made by me is correct. I have been a surveyor 14 years, live in the city of Boston. The distance from Essex street to Brown street through Capt. White's garden, is about 300 feet. [*Explains upon the plan the various obstructions between Brown street and Mr. White's garden, and the difference between his plan and that made by Mr. Saunders.*]

Nothing could be seen of Mr. White's house from the rope walk steps; nor from the post by Mrs. Shepard's house; nor from the post by Capt. Bray's house; nor from any part of the space between the two posts on the south side of Brown street, except that through a small opening between Mr. Potter's and Mr. Henderson's houses, a part of the rear of Capt. White's house but not the part in which he slept. Between the avenue from Brown street to Essex street, and Capt. White's house there are houses and other buildings; but from some parts of the avenue the upper western windows may be seen.

*Charles G. Page, sworn.*

I saw the prisoner on the 6th of April, about 7 o'clock, P. M. in Essex street, near the Salem Hotel—Forrester, Burchmore, Balch and I were together, and he asked us into the Hotel to take some refreshment. We stayed there about 5 minutes, then came out, and I left the m. I am a student of Harvard University. Glazed caps were at that time worn by almost all the students who belong here. Our caps were mostly bought

in Boston. Sixteen of my Salem class-mates have them. Gambler cloaks are also very common among students.

*Cross-examined.* I recollect the night, for on the morning after the murder I was accounting for myself, as was natural, and thinking what company I had been in. I had some doubt as to what evening this was, when I was first called upon. I then did not recollect the circumstances by which I could fix the time, but have recalled them since. I have never said that I did not recollect, but when first called upon I wished time for consideration.

*Moses Balch, sworn.*

I live in Lynde street. On the evening of the murder, I think, but I am not positive, I was with the prisoner, and Burchmore, and Page, and Forrester. I first saw him in Essex street, between 6 and 7 o'clock. I was with him 3-4ths of an hour. I saw him again between 8 and 9. He came into Remond's, in Derby Square. Burchmore, I think, and Forrester, and Page, were with me when he came in. We left that place about 9 o'clock, and all went to walk in Essex street. I left the prisoner at the corner of Court and Church streets, about 10 o'clock, to go home. My impression is that he went down Church street. I was with him all the time, from 9, until near 10. Forrester left us at the corner of the Franklin Building.

I know that dirks were very common after the murder. I know one or two young men who wore them before. I wore a glazed cap at that time.

*Cross-examined.* I cannot say positively that this was on the night of the murder. It was either on Monday or Tuesday evening. I cannot tell any nearer.

*Gardiner.* What was the weather on Tuesday evening?

*Webster.* I object—this question should have been put during the examination in chief.

The Court over-ruled the objection, and witness resumes—

The evening on which we were walking was dark and cloudy. We were at Remond's, smoking, when Frank came in. Remond's is an oyster-house. We were at the Salem Hotel the first part of the evening. When I got home, the folks had gone to bed; so it must have been 10 when I left the prisoner.

*Zachariah Burchmore, jun. sworn.*

On the evening preceding the murder, I went with the prisoner, and Page, and Forrester, to the Salem Hotel, about 7 o'clock. We staid there about 1-4 of an hour, and the prisoner left us. About an hour after, Forrester, Balch and I were sitting and smoking at Remond's, when he came in—about half past 8. We all went out together just before 9. I don't remember whether Forrester went out with us, or before. We walked in Essex street about half an hour, and I left him about half past 9, at Franklin Building, or opposite.

*Cross-examined.* To the best of my belief, this was on the night of the murder.

*Re-examined.* I am not sure whether it was before or after the murder; but my belief is that it was the same night.

I generally wear a hat.

*Cross-examined.* I can only recollect that it was on the evening that we were in the Hotel that I saw the prisoner. I don't remember what the weather was.

*John Forrester, jun. sworn.*

I took a walk with the prisoner, I think, on the evening of the murder. I met him in company with Balch, Burchmore and Page, and was introduced to him—this was about 7 o'clock. I was with him about 20 or 30 minutes. We went to the Salem Hotel. He left us, and I saw him again in about an hour at Remond's.

*Cross-examined.* It was on the night of the murder, or the night be-

fore, or the night after, that I walked with the prisoner and the others. I never walked with them all but once.

*Judson Murdock*, sworn.

I live in Brighton, and keep a public house, and saw a man whose name I have since understood was Palmer, but he then wrote his name J. C. Hall. He came there on Monday 3d of April, at 9 in the morning, I do not know from where, and stayed till the next day at 3 or 4 P. M. and then went towards Boston on foot. It is 5 miles from Brighton to Boston—from there to Charlestown 5 miles—and about 13 miles to the Half-way House.

*Joseph J. Knapp*, sworn.

I am the father of the prisoner, and made an assignment of my property on the 6th of April. I was at home that night a little before 10. I came from Mr. Waters's house in Derby street. I saw the prisoner just after 10. He entered my front northern parlor about 5 minutes after 10, and asked me if he should bolt the door. I told him no, for Phippen was out, and I should wait for him. I told him that I was very glad that he was at home in good season. He asked me if I wanted any assistance. I told him no. I asked how the weather was, and he said that it blew fresh from the east. I asked him if he knew the time, and he told me that it was just 10. He then retired to his chamber, and left me in the parlor. I did not go to bed till after 2 o'clock. His chamber was in the west end of the 3d story. There is only one stair-case up to the 3d story. My door opens into the entry. To come out of Frank's chamber, one must pass my door. He usually keeps his cap, when in the house, upon the window of the keeping room. I saw it there that night; he threw it there when he came in. No person moved in the house that night, except Phippen, when he came in. I saw Frank again the next morning, between 7 and 8 o'clock, when he came from his chamber. He usually put his boots in the kitchen; I don't know where he put them that night. His usual hour of coming home was about 10; he was very regular. He will be 20 years old next month. My son Phippen was with me until near 10. I left him at Mr. Waters's house. I again saw him about 20 or 25 minutes after 10, when he came in to take the key, that he might enter after he had finished his business. He was assisting Mr. Waters in making an assignment of my property, and he rejoined me just after 1 o'clock. He went to bed before I did, and at about 2, immediately after he came in. I did not see either of my sons in the chamber that night.

*Cross-examined.* I saw Mr. Michael Shepard that night, at my son's office, about 1-4 after 9 o'clock. I did not see him after that time. When I went home I had come from Mr. Waters's house, about 10 minutes before 10 o'clock, and left my son with Mr. Waters. I saw Mr. Shepard again the next day; I am not certain where, whether at his house or in the street. I believe that it was at his dwelling-house after breakfast. I had no conversation with him about Frank's being at home on the evening previous. I next saw him the same day, at the Mercantile Insurance Office, but had no conversation with him about it then. I saw him also again in the evening of the same day, abreast of the Asiatic Bank. I then had a conversation with him, and told him that my son was at home before half-past 10 o'clock. We had then no particular conversation, excepting he asked me if could credit what was in circulation—the arrest that had been made. Joseph and Frank had been arrested then. The Crowninshields had been arrested before. I remembered so as to tell Mr. S. all that happened the night before.

I have mistaken the questions—that conversation took place after the arrest.

I saw Mr. Shepard on the evening of that day at the Asiatic Bank. Nothing was then said about the time that Frank was at home. The first conversation on that subject with Shepard might have been the day of the arrest, or the day after the arrest of Joseph and Frank. I am

sure that they had been arrested when I had this conversation with Mr. Shepard, abreast the Oriental Insurance Office. It was on the evening of the arrest, and no other person was present. This was the only conversation I had with Mr. Shepard on the subject. Mr. Shepard introduced it. I told Mr. Shepard that my son was at home in bed before half-past 10 o'clock, and that I was at home so as to know when he came in. I told him I knew that the clock had not struck 10 when I left Waters's house, and that he was at home and had retired before 20 minutes after 10. I told him that Frank came in and asked whether he should bolt the door. I did not tell him that I recollected seeing Frank throw his cap upon the window-seat.

I don't recollect any conversation with Mr. J. W. Treadwell, about the time that Frank came home on the night of the murder, and have no knowledge of ever having talked with Mr. Treadwell on the subject; or of having said to him that I did not know what time Frank came home; or of having said, that "they said he came home at half past ten." I did nothing about the assignment till Mr. Shepard went away; he was to be my assignee. We talked about business in the street.

I was sitting up late to prepare a schedule of property. I did not see the assignment till the next day, when I signed it. I was collecting memorandums and papers necessary for the assignment.

*Aaron Foster*, sworn.

I live in Beverly and am the toll keeper at Beverly Bridge. I saw Frank Knapp pass the bridge some time after the murder with a sorrel horse, I think—I can't recollect his passing before the murder with such a horse. I know it was after the murder, because after he had paid toll he snapped his whip and said, this is the horse to go over the ground. It occurred to me that though he was a relative of Capt. White he did not care much for his death, and that if he had had this horse he might have escaped from the Wenham Robbers.

*Cross-examination.*—I knew Richard Crowninshield jr. very well. The time I saw Frank pass the bridge, was after the robbery; there was a young man with him who gave me a 5 franc piece. Of these we receive very few, sometimes 2 or 3 a week—sometimes 2 or 3 a day—sometimes more.

*Re-examined.*—I did not know the young man in the chaise with him, and I did not know Richard Crowninshield jr.

*James Savary*, sworn.

I board at the Lafayette Coffee House. I work for the Salem and Boston Stage Company. I was in the street on the morning of the 7th of April. I went about 20 minutes before 4 o'clock from the Lafayette Coffee House to the stable in Union street. I saw some person turn out of Capt. White's yard and come up street towards me. He came as far as Mr. Gardner's yard and then turned and ran. I was then between the two Peabody's houses. I saw him running down as far as Walnut street. As far as I can judge he was a man about my size. It was dark and misty. He had on a dark dress.

*Nathaniel Kineman*, called again.

I have testified to an observation I made of the windows on the second or third day after the murder, I could then see the whole of Capt. White's chamber window distinctly, 20 paces W. of the S. E. corner of Downing's house. I paced off the distance to ascertain.

*Silas Walcutt*, sworn.

I lived with Caleb M. Ames' in lower end of Daniel street, on the 6th of April. It leads into Derby street. I was out on the morning of the 7th between three and four. I was going to call Mr. Ames who lives in Palfrey's Court, because one of his horses was cast in the Stable. When I was going up the Court, I saw a man nearly opposite Mr. Prince's house in Derby street. He was walking easterly when he saw me, he then turned round and walked back westerly seven or eight rods off. The

last I saw of him was when he was just above Mr. Prince's house. He was a middling sized man. The morning was pleasant though rather loggy.

*John Mc Glue*, called again.

At the time of the murder, I owed Richard Crowninshield jr. some money. I do not know how much. Perhaps it was \$30 or \$40. It was for work he had done at the factory for me. It was for caps and turned axletrees. He asked me for the money before, and after the murder. He wanted fifteen or twenty dollars. I did not then pay him any part of it. On the Friday night before he was taken up, I paid him \$7. He called me out, and I went down to the Franklin building, and he told me, if I would pay him, he would let me have it back, if I wanted it—I told him I would pay him on the next week. After murder he came to Newport's to find me and I gave him an order for \$10. He told me a man was going to give him money and did not. This was Friday before he was arrested. Then George came for some money and asked for me.

*Warwick Palfray jr.* called again.

I published in my paper of Monday an account of the finding of some flannels, in Danvers, which was on the Saturday previous to the publication. Richard Crowninshield jr. hung himself, I believe, on the next Wednesday.

*Nathaniel P. Knapp*, called again.

When my brother started for Wenham, at the time of the robbery, I was not at home. I don't recollect hearing them speak of arming themselves before they went. I never heard a syllable of their saying jocosely, they might be robbed. I never said I did. I never gave a different account of Mr. Colman's conversation. I never gave a different account of the light in Mr. White's chamber.

#### FOR THE GOVERNMENT.

*George Wheatland*, sworn.

On the day before the arrest of the Crowninshields, 10 o'clock, A. M. Phippen came to my office. Said I, "let's hear about the robbery at Wenham." He replied that there had been a number of strange circumstances lately, and mentioned the affair of the house in Bridge street, and gave some account of the 'robbery'—said that when his brothers went off that evening, thinking they might be attacked, Frank took his sword cane and made a parade about his pistols, but finally went without them.

A few days after the murder, he said that on the night of the murder he saw a light in Capt. White's chamber. He staid in his office till near 10, then went down to consult Mr Waters, at his house. He went up with Mr Waters to his office, and stayed there till near eleven o'clock. He could not tell when it was he saw the light, as he passed Capt. White's house four times. He spoke of the interview between himself, Mr Colman and Prisoner. I asked Phippen why Mr Colman went to Frank's cell. He stated that Mr Colman was a very intimate friend of the family, and married Joseph. That he went to Joseph's cell, and Mr Colman told him that he was engaged then. He said that when he went in, Joseph had been telling Mr Colman, every thing, and he (Phippen) told Mr Colman they must go, and tell Frank what they had been about. He said, he mentioned to Frank, that Joseph was going to confess. That it would be better as Joseph had a family, and Frank if convicted would stand a better chance to get a pardon. I asked Phippen if Mr Colman had asked Frank any questions. He said he did ask him some, and that Frank answered. I don't recollect what the question was, or the answer. I told him, that it would be enough to make Frank a principal. I told him that the confession was premature. He said that it made no differ-



ence, as they had evidence enough already to convict Dick as a principal.

*Cross-examined.*—I don't remember the question Mr Colman asked. I don't know whether it related to the weapon being found, or his being in Brown street, but think it did to one or the other. Phippen had told me that Frank was in Brown street, but I do not know whether he got it from Frank or Jo. I do not know the reason why I thought it would prove him a principal. I have told this, to only one person, I believe, Mr Stickney of Lynn. I cannot swear it was one of those things which I have stated. I was asked by Mr Webster, whether the question was about the club, or about Brown street. I told him, it related to either one or the other. I can't positively say, whether I have expressed a hope, that the prisoner would be hung, but I think I have. I have said they were guilty. I thought Joseph Knapp was premature, because I heard that Palmer did not implicate the Knapps.

*Rev. Mr. Colman, called again.*

I heard the testimony of Mr. Phippen Knapp, but it does not lead me to alter my own. My first interview with Joseph J. Knapp, jr. was on Friday, 28th of May, at the examination before Justice Savage, at the prison. I went afterwards to see him, with the approbation of the Committee of Vigilance, and staid with him till near one o'clock. I went again about three o'clock, at his request. Mrs. Knapp also requested it. I remained with him till four. Joseph desired me to ask his father and brother to come to him with me. I went to Mr. Knapp's, senior, for them. He wished me not to go, because it would be said Joseph was making a confession. He desired me to see Phippen. I went to his office, and he was not there. I waited 15 minutes for him, saw him coming in St. Peter-st. from the jail. I went to meet him—as we stood talking, Mrs. Beckford and Mrs. Knapp went to the jail. While I stood by the chaise, Joseph Beckford came out, and said Joseph wanted to see me. I declined. Very soon, Mr. Brown came again for me. I then went, and Joseph made a full disclosure. While I was there, Phippen came to the cell, and requested me to admit him. I declined, till I had finished, then admitted him. Phippen said, it must not be made, unless Frank consented. I then went into Frank's cell, &c [as before stated.]

On my return from Boston, on the next day, I met Mr. Phippen Knapp near the Half Way House, as he has stated, in a chaise with a gentleman. I beckoned to him, and asked him to come to my chaise. He asked me if I had said any thing as coming from Frank. I told him I thought I had to Mr. Stephen White, who was in Boston, and whom I had seen that afternoon. I wrote a note, in pencil, to Mr. White, requesting him to consider Joseph as authority for what I had told him.

Mr. Knapp desired that I would not go to see his brothers till his return. I promised to wait till one o'clock, and did wait till three, and then went.

*Cross-examined.* As we came out of the jail, Mr. Phippen Knapp went to the cell of Joseph, to tell him, as I supposed, that Frank assented—I thought so. When I went to the jail with Mr. Dexter, I told him I had no doubt about Frank's having given me direction where the club was to be found; but went with him to Joseph, to satisfy myself. I did not tell Mr. Dexter that I had nothing from Joseph, about the club. I asked Jos. whether he had told me particularly where the club was. This is my impression. I do not recollect the precise words. I cannot recollect whether I told him I wanted him to answer me a question, and that I wanted only a negative answer.

*Michael Shepard, sworn.*

I had a conversation with Capt. Knapp senior soon after the murder, while passing from the offices to my store, and I asked if Frank associated much with two young men that I suspected. He said that he did not, but had kept very good hours of late, and that on the night of the murder Frank came home and went to bed at 1-2 past 10 o'clock—

"so Phippen told me" said he. Capt. Knapp did not tell me as from his own knowledge at what time Frank came home. This was before the arrest of his sons, and I think before the arrest of the Crowninshields, and while we were walking from the site of the old Sun Tavern to the head of Union street.

He did not tell me that he was at home that evening and knew at what time Frank came in. I don't recollect that he told me that he came in at 5 minutes after 10 o'clock. He did not tell me of the conversation between Frank and him about bolting the door, nor that he heard the clock strike ten before he left Waters's house.

*Cross-examined*—I did not ask him as to his own knowledge concerning what time Frank came in, and don't think that I put any question to him except as to his son's associating with these two young men.

*John W. Treadwell*, called again.

On Friday morning, the 28th of May, I had a conversation with Capt. Knapp senior. I took him into the private room at the Bank, and told him that I was entirely satisfied of the guilt of his sons, and advised him to go to the jail, and get a confession from one of them if he wished to save either. He said he would go. I then asked him if he knew where Frank was that night. He said no. I then put the question "at what time did he come home?" He said "I don't know, but I believe about the usual time" and added that he himself was up that night till very late arranging his papers.

*Mr. Shepard* again.

Capt. Knapp was at that time probably a good deal agitated. He had found it necessary to assign his property. I however saw nothing unusual. He was a little disturbed and perhaps mortified.

*George W. Teal*, sworn.

I live in Danvers, and attend the Bar at Dustin's. I saw the man now called Palmer there at about 6 o'clock P. M. on the 9th of April. He staid there near an hour and a half. It was the day after Capt. White's funeral. I was told to watch him as a suspicious person. He left there about 7 o'clock.

*Stephen Brown*, sworn.

I lived at the Hotel in Lynnfield last April. I saw Palmer there on Wednesday before 'the fast.' He came there about 9 in the morning, and stayed until 7 or 8 o'clock on Saturday morning, except that he was away on Friday afternoon.

*Cross-examined*.—I saw him in the bar room on Saturday morning, and he talked as if he had been at a public meeting in Salem on the night before.

#### FOR THE PRISONER.

*Elizabeth Benjamin*, sworn.

I am a domestic at Capt Knapp's senior. On the night of the murder, Frank must have slept at home, or I, who make the bed should have remarked it. I saw him come down in the morning as usual. I myself went to bed about 9 o'clock. Phippen did not go to bed that night. I found him in the morning writing in the keeping-parlor. I got up about 5 o'clock in the morning. I heard of the Wenham robbery, and know that Joseph and Frank went away on the night of that robbery, after dark.—There was nobody at home when they went. The shutters of the parlor were still closed when I came down in the morning, and the lamps were burning, and nothing appeared unusual.

*N. Phippen Knapp*, recalled.

I remember conversing with Mr. Wheatland a few days after the report of the confession. I inquired of him about Counsel for my brothers, and he made some suggestions. The principal part of the conversation was by him. I am positive I said nothing such as he has stated concerning the Wenham robbery. On the night of this robbery I went to the Beverly Lyceum, and on my way I met my two brothers, Samuel and

Frank, in separate chaises. In regard to their arms, Frank, after this robbery, said that it was fortunate that he had his sword cane, and this was what I told Wheatland, and nothing else. I don't know that I even mentioned pistols to him. Some night after, Frank did take a pistol by the advice of the family. I do not recollect that I had any conversation with Mr. Wheatland about the robbery, but if I did, I have now stated the amount of it.

After I came from Waters's, on the night of the murder, I conversed sometime with father, and then went into the cellar to get something to eat, and while I was gone, father went to bed. I then wrote till day break, copying the assignment.

I never gave any other account of the light in Mr. White's chamber, than I have already given on the stand. I did not tell Mr. Wheatland what took place in Frank's cell, as he stated.

*Henry Field, sworn.*

On the night of the Wenham robbery, Mr. N. Devereux and myself went to the Beverly Lyceum, and soon after we got there, Mr. P. Knapp came in, and told me that he had met his two brothers.

After the conclusion of the evidence, the cause was argued for the prisoner by Mr. Dexter, and for the government by Mr. Webster.

The Jury were charged by his honor Judge Putnam.

After deliberating twenty-four hours, the Jury returned into Court, unable to agree upon a verdict, and were discharged from further consideration of the cause.

The Solicitor General, on behalf of the Government, then moved that a Jury be empanelled to try the prisoner again upon the same indictment. This was opposed by his Counsel, and a motion made for a continuance of the cause, on the ground of the absence of a material witness.

This motion was supported by several affidavits stating the facts, to which the witness was expected to testify. The counsel for the Government admitted, that the witness, if present, would testify to the facts set forth in the affidavits; and the prisoner will, therefore, immediately be again put upon trial.

PALMER'S LETTER.—[Referred to in page 35.]

BELFAST, May 12, 1830.

Dear Sir—I have taken the pen at this time to address an utter stranger, and strange as it may seem to you, it is for the purpose of requesting the loan of three hundred and fifty dollars, for which I can give you no security but my word, and in this case consider this to be sufficient. My call for money at this time is pressing or I would not trouble you; but with that sum, I have the prospect of turning it to so much advantage, as to be able to refund it with interest in the course of six months. At all events I think that it will be for your interest to comply with my request, and that immediately—that is, not to put off any longer than you receive this. Then sit down and enclose me the money with as much despatch as possible, for your own interest. This, sir, is my advice, and if you do not comply with it, the short period between now and November will convince you that you have denied a request, the granting of which will never injure you, the refusal of which will ruin you. Are you surprised at this assertion—rest assured that I make it, reserving to myself the reasons and a series of facts, which are founded on such a bottom as will bid defiance to property or quality. It is useless for me to enter into a discussion of facts which must inevitably harrow up your soul—no—I will merely tell you that I am acquainted with your brother Franklin, and also the business that he was transacting for you on the 2d of April last; and that I think that you was very extravagant in giving one thousand dollars to the person that would execute the business for you—but you know best about that, you see that such things will leak out. To conclude, sir, I will inform you, that there is a gentleman of my acquaintance in Salem, that will observe that you do not leave town before the 1st of June, giving you sufficient time between now and then to comply with my request; and if I do not receive a line from you, together with the above sum, before the 22d of this month, I shall wait upon you with an assistant. I have said enough to convince you of my knowledge, and merely inform you that you can, when you answer, be as brief as possible. Direct yours to CHARLES GRANT, jun. of Prospect, Maine.

3

0

**APPENDIX**

TO THE REPORT OF THE TRIAL OF

**JOHN FRANCIS KNAPP,**

**ON AN INDICTMENT FOR MURDER.**

CONTAINING

**THE NEW EVIDENCE,**

THE

**ARGUMENTS OF COUNSEL,**

AND

**THE CHARGE**

**OF HIS HONOR JUDGE PUTNAM, TO THE JURY,**

**ON THE SECOND TRIAL.**

---

**SALEM EDITION,  
1830.**

1951 Dec 11  
Gift of  
Miss Abby L. Pierce  
of Bridgton

## APPENDIX.

### SECOND TRIAL.

SATURDAY MORNING, AUGUST 14.

Present, PUTNAM, WILDE, and MORTON, Justices.

The former jury having been unable to agree upon a verdict, John Francis Knapp was again placed at the bar for trial upon the same indictment. The following jury were impannelled and sworn, to try the prisoner:—

Samuel N. Baker,	-	-	-	of Ipswich, <i>Foreman.</i>
Orlando Abbot,	-	-	-	of Andover.
Timothy Appleton,	-	-	-	of Ipswich.
Stephen Bailey,	-	-	-	of Amesbury.
Jacob Brown,	-	-	-	of Hamilton.
William D. S. Chase,	-	-	-	of Newbury.
Stephen Caldwell,	-	-	-	of Newburyport.
Phineas Elliot,	-	-	-	of Haverhill.
John Ladd,	-	-	-	of Haverhill.
Thomas Merrill,	-	-	-	of Topsfield.
Amos Shelden,	-	-	-	of Beverly.
Moses Towne,	-	-	-	of Andover.

The same Counsel were assigned the prisoner.

Counsel for the Government—Hon. Daniel Davis, Solicitor General, and Hon. Daniel Webster.

The following is an outline of the Solicitor General's opening of the case.

He commenced by explaining the several counts in the Indictment. He referred to the painful and distressing duty he had to perform in the share assigned him in the management of the cause. As to the important and responsible duty of the Jury, he encouraged them to advance to that duty with fortitude and impartiality, as a reason for which he assured them that they would derive all necessary advice and direction from the Court.

He adverted to the excitement which the horrid nature of the crime, and the circumstances with which the commission of it was attended, had created. He would disown any country where the same cause did not produce a similar effect. He portrayed in vivid colors, the unheard of and diabolical motives by which the perpetrators of it were prompted; and justified and vindicated all the measures which had been pursued by the Government and the citizens of Salem, to detect the assassins of the deceased, and to bring them to condign punishment; and reprobated in strong language the reproaches that had been cast upon them by the friends of the prisoner, and his accomplices; and compared their attempts to suppress all inquiry, and all efforts to prevent the detection of the murderers, and the infamous slanders upon some of the first men

in the county, who had embarked in the associations to expose and punish the authors of this unheard of and diabolical combination, as of a grade of malignity and atrocity little short of the murder itself.

The Solicitor General then proceeded to define and explain the nature of the crime of murder; that it was the greatest offence that can be committed against the law of nature—that it was punished with death by all laws human and divine—that death was the only adequate punishment for the crime—that its aggravations were two-fold; it set at defiance the laws of nature, of society and of God; and that the injury and sacrifice to the innocent victim, exceed all that the imagination can paint or describe—it sent him into the presence of his Maker without the notice of an instant; with all his imperfections on his head; without the privilege of uttering a single prayer for mercy from that throne whence we must receive it, or perish. The Solicitor General here adverted to the impious doubts and sentiments of those who denied the power of human governments to inflict capital punishments for any crime whatever, however malignant or atrocious; and pronounced their opinions upon this subject to be nothing less than setting up their wisdom in opposition to the wisdom of the all-wise and all-powerful Lawgiver and Judge of the universe—and nothing less than a direct disobedience of that sacred and divine law which declares “that ye shall take no satisfaction for the life of a murderer who is guilty of death, but he shall surely be put to death, for the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.”

The Solicitor General then proceeded to state the facts which he expected to prove in support of the prosecution, which were—That a conspiracy, instigated by the most paltry, as well as the most diabolical motives, was formed to assassinate the deceased—That this conspiracy originated with Joseph J. Knapp, Jr., as long ago as the month of February last—That it was first proposed by him to his brother, the present prisoner—That he avowed the object to be, to destroy the will of the deceased, by which the bulk of his property would pass to relations other than the mother of his wife, who was a niece to the deceased—This wretch then proceeded to declare that he would give \$1000 to any person who would commit the murder—The present prisoner immediately and without hesitation or compunction assented to this infernal proposition; joined the conspiracy, and afterwards became one of the most active agents in carrying it into execution. The two Crowninshields were immediately applied to; and they joined in the conspiracy. The act of inflicting the fatal blow was assigned to Richard Crowninshield, and by him inflicted—and the price of blood was paid to him. The present prisoner accompanied him, and became a principal with him in the perpetration of this horrid deed. The plan of operations was matured on the 2d of April preceding the murder, which was perpetrated on the evening of the sixth of April, under circumstances so appalling, as to defy adequate description. This is the outline of the case preceding the evening of the 6th of April, the time when the murder was committed:—the particulars of all which will be detailed by the witnesses for the Government.

As before stated, the arrangements were completed on Friday, the 2d of April. The most important facts that will be proved are the following:—

That on that evening, Joseph J. Knapp, Jr., Richard Crowninshield, and the present prisoner, met on the common in Salem—that Richard Crowninshield then exhibited to Jos. Knapp the weapons he had prepared for the execution of his murderous purpose; they consisted of a dirk, and a bludgeon, the latter of which he then stated he had made with his own hand. It had been previously arranged that Jos. Knapp should unbar and unscrew the window in a back apartment in the house, which he had the means of doing, from his connection with the family, without

obstruction or suspicion—that this preparation was accordingly completed—the facts and circumstances concerning which will be clearly stated by the Government's witnesses.

It will further be proved to you, gentlemen, that about 10 o'clock on the evening of the 6th of April, Richard Crowninshield, and the present prisoner, met in Brown-street; that they remained together a short time, with a full and perfect understanding and knowledge on the part of the present prisoner that Richard Crowninshield was to proceed immediately to the house of the deceased and commit the murder; that Frank Knapp, the present prisoner, engaged to, and did remain in Brown-street, during the time the murder was committed, with a full knowledge and consent on his part, of the intention of Richard to commit the murder; that he remained in Brown street for the purpose of rendering every assistance to the principal perpetrator which accident or the incidents accompanying the transaction might render necessary—and under such circumstances, as will leave no reasonable doubt in your minds, that he was a principal in the second degree in the murder, for which he stands charged in this indictment.

The Solicitor General proceeded to state, that his only object in the course he should pursue in opening the cause, would be to explain the evidence which was now to be offered the Jury, and the law by which the Jury were to be governed in its application to the case of the prisoner, with the utmost clearness and simplicity, and in such a manner as would best assist the Jury in the progress of their duty. He further observed,

It is manifest from the foregoing statement and explanation, that it is most important the Jury should have a clear understanding of the law upon the subject of principals in the first, and principals in the second degree, in cases of murder. And he referred to the following principles of law, which he quoted and read from approved authorities and writers on criminal law:—

Whether a person is a principal in the first or second degree, is a question of law, to be decided by the Court. 2 *Stark. on evidence*, 6, note (v). 4 *Burr*, 2076.

A principal in the first degree, is the absolute perpetrator of the crime, actually present, and who inflicts the deadly blow. 2 *Stark*. 6. *Hale*, 615, 616. 2 *Hawk. c.* 29. s. 11.

A principal in the second degree is one who is present, aiding and abetting the fact to be done.

In the construction of the statute of this Commonwealth, as to what constitutes *presence*, within the meaning of that statute, our late venerable and lamented Chief Justice, in his charge to the Grand Jury, at the present term of this Court, states to them, that

“It is not required that the abettor shall be actually upon the spot, when the murder is committed, or even in sight of the immediate perpetrator, or of the victim, to make him a principal.

“If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate to escape, having knowledge of the purpose and object of the assassin, this, in the eye of the law, is being present, aiding and abetting, so as to make him a principal in the murder.”

The following are the authorities and cases which substantiate the position laid down by the late Chief Justice. To prove one to be a principal in the second degree, it must be shown, first, that he was present: second, that he was aiding and abetting. 2 *Stark*. 7.

But it is not necessary to show that he was actually standing by, with- in sight or hearing of the fact. *Not an eye or an ear witness*. 2 *Stark*. 7. 1 *Russ*. 30. *Foster*, 349, 350. 1 *Hale*, 537.

As where one commits the murder and the other keeps watch or guard



at some convenient distance, to prevent surprise, or to favor the escape of those immediately engaged. *Foster*, 350.

If several set out upon a design to murder, and each take the part assigned him, they are all present, in contemplation of law, when the fact is committed. *2 Stark*. 7. *Foster*, 350. *1 Hale*, 439. *Kel*. 111.

In general, if a party be sufficiently near to encourage a principal in the first degree with the expectation of *immediate help* or assistance in the execution of the felony, he is, in point of law, *present*. *2 Stark*. 8. *1 Hawk. c. 32. s. 7*.

If several go on a design to commit burglary, and one only enter the house, and the others stand at the *garden gate*, or the *lane's end*, to watch, they are all, in law, principals. *2 Russ*. 913. *1 Hale*, 555. *2 Hawk. c. 29. s. 8*.

Lord Dacre's case, who went to steal deer. One of the company killed the keeper, Lord Dacre and the rest of the company being in other parts of the park. And it was held that it was murder in them all; that all were present. It was sufficient that, at the instant the facts were committed, they were of the same party and upon the same pursuit of those who did the facts.

As to aiding and abetting, these words include every species of assistance, either by the *acts* or the *assent*, or readiness to further the general purpose. *2 Stark*. 10. *Foster*, 350.

For if any one comes for an unlawful purpose, although he does not act, he is a principal.

This allegation implies *assent* to the principal act, and must be proved by some act, done in furtherance of the commission of the crime, or that he was keeping watch, or that he was associated with the rest, in the common illegal object, in the furtherance of which the crime was committed. *2 Stark*. 12.

It is sufficient that the principal is encouraged from the hopes of *immediate assistance* from the abettor, whether he be in view of the fact or not. *Hawk. b. 2. c. 29. s. 8. Salk*. 334-5.

If a person be present in the commission of a murder, though he takes no part in it, yet if it be done in private, as in cases of secret assassinations, and he does not endeavor to prevent it, nor apprehend the murderer, these circumstances may be left to the Jury as evidence of *consent* and concurrence in the act. *2 Stark*. 12. *Foster, Disc. 3. s. 5*.

In addition to the evidence given on the former trial, the following new witnesses were examined:

FOR THE GOVERNMENT.

*Judith Jaquith*, sworn.

On Friday evening, the 2d of April, about 10 o'clock, I was passing down Brown street, from a meeting which I had been attending in the Vestry of the first Baptist church, in Marlborough street. When I got to Capt. Kinsman's house, I saw a group of men standing by the rope-walk steps, and one of them was pointing towards Capt. White's house. As I passed by Mr. Downing's gate, I saw that there were three persons, one sitting down, and one standing each side of him. The one who stood on the eastern side had something in his hand; I could not tell what it was, but at the moment thought it an instrument of music, or something of that kind. As I passed, the one that was sitting took it out of the hand of the other, and put it behind his back, and I passed on. The two persons standing had on cloaks, or wrappers, with capes, and the one sitting had on a hat, and a surtout without a cape. I could not tell what the instrument was.

*Cross examined.* I saw no other person in the street than those three individuals. I walked fast by them, did not run. I told of it the next day; have mentioned it something like a hundred times. I was not summoned to attend on the former trial of this cause. When I first saw

them pointing, I was by Capt. Kinsman's house; when I saw them concealing the instrument, I was by Mr. Downing's house. I know it was Friday evening. I mentioned it the next day. I thought what I saw was an instrument of music. There is a meeting every Friday evening thro' the year. I always attend.

*Lewis Endicott, sworn.*

I had a conversation with Joseph J. Knapp, jr. in January last, about the time that Capt. White had an ill turn. He said if he had been in town, Mrs. Beckford would not have sent to Boston for Mr. Stephen White, for he could destroy all his own notes. He said that Capt. White had made a will, and that Mr. Stephen White was not executor, but Mr. John W. Treadwell alone; that black and white would not lie; that Mr. Lambert was the only witness. I asked him if he had seen the will; he said he had. I asked him if Capt. White did not keep his will locked up? he said yes; but there was such a thing as having two keys to a lock.

*Cross-examined.* He said there was only one witness to the will.

Miss Sanborn and Miss Kimball, on this trial stated, that, on the morning after the murder, a cloak was left at Capt. White's house by a young man, whom they did not know, who said "This is my brother's cloak." It was afterwards proved that this cloak was left by Stephen Stratton, a servant of Mr. White.

#### FOR THE PRISONER.

*Daniel Potter, sworn.*

I have conversed twice with Leighton about the murder. Once last Friday afternoon while the jury were out. He then said that Frank Knapp came to Wenham soon after breakfast, on the day that he overheard the conversation that he had testified to. As I questioned him, some one told him to stop. I saw him again two hours afterward. He said Frank was viewing the farm that morning; he said nothing of the conversation that he had heard.

*Cross examined.* I live in Salem;—am a blacksmith. My meeting with Leighton was accidental. I had a bet on the last trial,—an the verdict while the jury was out the first time. I have none now.

*Stephen Field, jun. sworn.*

I overheard the conversation between Leighton and Potter, as he has testified to it. I had no conversation with Leighton myself.

*Rev. James Flint, sworn.*

The prisoner's father is a member of my society. About two or three weeks after the prisoner's arrest, I visited him in his cell, and have continued to visit him. I have known him seven or eight years.

*Stephen P. Webb, sworn.*

I left Mr. Deland's house, which is next to Capt. White's, on the evening of the murder, at 1-2 past 10 o'clock; Did not see or hear any thing unusual. From the appearance of the pavement, it had rained a little, though it did not rain at that time.

*James Savary, sworn.*

In addition to his former testimony, this witness stated, that he thought the person who came out of Mr. White's yard, was the prisoner;—He said "I mentioned it to a person, that I was carrying to overtake the Boston stage a few days afterward. I also mentioned it to Mr. E. Maxon, at the Coffee house, the morning after the murder.

*John Chapman, sworn.*

The weather on Monday evening before the murder was very pleasant. It was a clear moonlight night. There was a public meeting at the South Meeting House. It was a very full meeting.

Affidavits were read, stating that Samuel H. Knapp, a brother of the prisoner, would testify, if present, that on the night of the murder, the prisoner came home about ten o'clock, and opened the door of the chamber where he was, and spoke to him at 10 minutes after ten, and then he

spoke to the prisoner, and that he heard the prisoner go immediately to his own room and as he supposed to bed.

FOR THE GOVERNMENT.

*Perley Putnam, sworn.*

On Friday, week before last, I asked Burchmore, what he expected to testify to. He said he did not expect to be able to testify to any thing. It was before he had been examined; on the 5th or 6th of this month. I asked him if he was positive that he saw Frank Knapp on the evening of the murder. He said he could not swear that he did. That was the amount of the conversation. I had another conversation with him last Monday morning, when I came to the Custom house. I told him that I had been reading the trial, and that his testimony did not amount to much. He said he was not positive that he saw Frank Knapp on the evening of the 6th April.

*Cross examined.* He did not say he had any new recollection. I asked him no question which would lead to that answer. I did not question him at all.

*Rev. Bailey Loring, sworn.*

John Forrester junior, has lived with me, at Andover, a year, except occasionally, when he visited his father in Salem. A week before the trial commenced, two gentlemen, whom I understood to be Mr. Kantoul, and Mr. N. Phippen Knapp, came to my house to see Forrester. I said to him, do you know any thing about the murder? He said that, about the time of the murder, he was in Salem, and was walking with Frank Knapp and some other young men. I asked him if he could recollect what night it was. He said it was on that night or about that night. I asked him if Page could not recollect the night; he said he could not, and that the gentlemen who came up wanted him to go to Salem, to meet the others to bring up some circumstance to refresh their recollections. They told him, if he did not come, they would summon him.

*John F. Webb, sworn.*

I conversed with Samuel H. Knapp, before he went to sea, about the prisoner. He was in the counting room, the 8th of June. I asked him if he knew when Frank was at home the night of the murder? He said he did not; He was not at home, when he (Samuel,) went to bed.

*Cross examined.* I recollect my precise question to Samuel. It was as I have before stated, with the same answer.

*Joseph White, sworn.*

I know Charles Page. We are both members of College. I have conversed with him about the murder. On the 19th of this month, I was riding to Cambridge with Page. On the road, he said that it was Monday, or Tuesday or Wednesday evening, that he was with the defendant, and he could not tell which. He said he had been summoned as a witness, that he wanted to go to New York but could not on that account. I was not in Court when he testified, I was out of town at a friend's house and read his testimony in the printed report.

*Cross examined.* Mr. Stephen White is my father.

*Dr. Abel L. Peirson, sworn.*

On Thursday, 8th of April, I was requested to examine the body of Capt. White. Doctor Johnson, some of my pupils, and several spectators were present. It was the first time that I had seen the body after the murder. The wounds on the head have been correctly described by the other physician. On examination, we found two groups of wounds on the body. There were six stabs, three inches from the left pap, and near together, each of which measured exactly half an inch in length, and gaped about a quarter of an inch, and resembled somewhat the figure made by a parenthesis [ ( ) ]. About six inches further down, there was another series of wounds seven in number. These wounds were all mere

slits, having the edges together, and not gaping at all. One of them was three quarters of an inch in length: the other varied from half to three quarters. Four or five wounds penetrated the substance of the heart, though none of them reached the cavity. The second group of wounds had a downward direction, nearly at right angles with the first. The (diaphragm was perforated by them.) The fifth, sixth and seventh ribs were broken, by the blows which formed the first group of wounds. These two series of wounds diffused in so many particulars, that I inferred that they were made by different instruments. The instrument by which the ribs were broken must have been about five inches in length, as the ribs were probably broken by the guard or hilt, and it did not appear to have been long enough to reach so far as the instrument that passed through the diaphragm.

*Cross examined.* I cannot explain satisfactorily the different appearance of the wounds, without supposing two instruments.

*Jesse Smith, jun. sworn.*

Moses Balch has told me at two several times, that he could not tell the time of night that he left the prisoner. He once said it was about 20 minutes or half past nine, but he could not tell. The second time, he said it must have been about 10 o'clock, but that he was not certain. He did not tell me that it was on the night of the murder—all he knew about it was, that he was walking with the prisoner on Monday or Tuesday evening, he did not know which.

*Cross examined.* He said Charles Page was with them and he could tell. Since the last trial I have told him what he told me before, that he left the prisoner about half past nine, and he said he did not recollect it. He said that he had always said it was about 10. He has said since that his recollection agreed with that of the prisoner.

*Joseph Dewing, sworn.*

About twelve months ago, in the West Indies, I had a conversation with the prisoner. He said, he had gone into his father's house at an early hour and retired, and after the family had retired, he had left the house and been absent till day light.

*John F. Webb, called again.*

The prisoner has frequently told me, that he could go into and out of his father's house in the night without any body's knowing it.

*William Mansfield, jun. sworn.*

I was at the town meeting at the town hall on the ninth of April. Richard Crowninshield sen. was there.

*Cross examined.* The meeting was at 7 o'clock. Notices were posted in the day time; I should think in the forenoon. The general meeting was dissolved at half past nine. Between 11 and 12 the watch was set, and the last persons left the hall.

*Dr. Johnson called again by prisoner's counsel.*

I did not observe such a difference in the appearance of the wounds as to lead me to believe that more than one instrument had been used.

*Mr. Dexter then addressed the Jury as follows:—*

GENTLEMEN OF THE JURY,

You have now heard all the evidence on which you are to form your judgment of life or death to the prisoner. He stands before you for that judgment under terrible disadvantages. I will not repeat to you what has already been stated on that subject. I have neither time nor strength to expend on any thing but the law and the evidence. You see around you proofs of the power against which the accused has to struggle in his defence. You see the extraordinary array of counsel, active and inactive, brought in aid of the government, or withdrawn from the reach of the prisoner. You have witnessed the efforts that have been made by those who could take no other part in the prosecution, to fasten upon him the evidence of guilt; and you may anticipate the power and

eloquence with which the case is to be closed against him. Gentlemen, why is all this? While the official prosecutors are competent to discharge the duties of their office, why are they surrounded and replaced by this extraordinary assistance? Is there any thing in this cause that threatens to turn aside public justice from its proper victim?

If there is legal evidence against the prisoner, can there be a doubt that he will be convicted? And if there is not, is a verdict of condemnation to be wrenched from you by talent and eloquence, which the ordinary course of a criminal trial would fail to procure? But, Gentlemen, it is enough that you perceive all this. I need not farther caution you against its power. There is, however, a more dangerous influence in this case—one that you are not in a situation to perceive, but which presses most heavily on the prisoner. We care less for the array of counsel than for the array of the community against him. We should not fear even such efforts as we expect here, if the case could be fairly brought before you in evidence. But we have greatly feared the effect of this hostile atmosphere on the testimony. We have feared, and found, that in such a state of excitement, and when such arrangements have been made for the success of the prosecution, no man could take the stand, an indifferent witness. He is to be esteemed a public benefactor on whose testimony the prisoner is convicted, and he who shrinks from the certainty expected of him, does it at the peril of public displeasure and reproach. If proof of this were needed, it might be found abundantly in the variance of the evidence on the two trials of this cause. But this is a small part of the evil; the cause has been tried and the witnesses examined and re-examined long before a jury was impanelled; and this last reinforcement of evidence, is but proof of what has been done before for the conviction of the prisoner.

After all that has been said abroad, we fear that it may even seem strange that we should claim for the prisoner that presumption of innocence which the law affords every man. But it is not the less your duty to extend it to him; and this presumption is not only that he is innocent of all moral guilt in this matter, but even if this shall fail him, still that he is innocent of the particular crime charged in the indictment. You must be satisfied by the evidence in the case, beyond reasonable doubt, of the truth of the whole and of every material part of the charge as it is here laid against him. I say this, gentlemen, because a new doctrine of the law has been advanced to meet the difficulties of this case. We have been told that the prosecution will contend that if the general guilt of the prisoner has been established, there is a presumption of law that he is a principal offender; that the burden is thrown on him to show that he is guilty in a less degree. It is enough for us to say, that this is a doctrine subversive of the very foundation of all criminal law; that it strikes at the root of that humane provision, that no man's guilt is to be presumed, and that it is unsupported by any authority which has been or can be adduced. It was attempted, indeed, at the last trial to support it by the analogy of that rule, which, when a homicide is proved, presumes malice to constitute it murder. But life is not to be taken away by analogy; much less by the analogy of an obsolete and savage rule of law, on which, however it may stand in the books, neither Court nor Jury has ever dared to act. No man was ever yet convicted of murder in this country on that bloody presumption; and a jury that should convict upon it, would deserve to be hanged upon their own verdict.

What, then, is the crime of which the prisoner stands indicted? It is, that he was present, aiding and abetting in the murder. Not that he is guilty of the murderous intent, or that he procured the murder to be committed, but that he was present at the perpetration of it, and gave his assistance to the murderer.

These are the facts of which you are to be satisfied by the evidence you have heard before you can return a verdict against him. But we ad-

ent the law to be well settled, that an actual presence is not necessary to constitute the prisoner a principal. We admit that any place from which actual physical aid can be given in the commission of the murder, is presence within the meaning of the law. I need not cite to you the cases on this subject. They have been repeatedly examined and compared.

We claim that this is the result of all of them, and that beyond this the doctrine of constructive presence never has been carried; that to make a man an aider and abettor in a felony, he must be in such a situation at the moment when the crime is committed that he can render actual and immediate assistance to the perpetrator; and that he must be there by agreement, and with the intent to render such assistance. All these circumstances—the intent—the agreement, and the actual power to assist in the commission of the crime, must concur, to make one really absent from the immediate scene of it constructively present. No previous consent or inducement—no encouragement at the moment, short of the hope of actual and immediate physical assistance, is sufficient for that purpose. This then, and this only, is the question that you are to try on the evidence you have heard, and from your own view of the scene of the murder:—Was the prisoner, with such intent, under such an agreement, in such a situation, that he could render actual aid at the moment when the murder was committed? With this view of the case, I will now ask your attention to the evidence on the part of the prosecution.

Sensible of the weakness of the evidence of the prisoner's presence in Brown-street (especially as it stood on the first trial) the prosecutors have relied much on the aid of the conspiracy. There are two views in which this may be considered. If by a conspiracy is meant that the prisoner had before consented to, or contrived the murder, the evidence is most material. It goes directly to one of the facts necessary to constitute him present, for he could not be there to aid unless he were a party to the scheme. To so much of the evidence on this point no objection can be made. But a much more extensive and less legitimate use has been made of this conspiracy. On the ground that a conspiracy being once established, the acts and declarations of any one confederate are proof against the rest,—all the proceedings of the elder Knapp and of the two Crowninshields have been made evidence against the prisoner. Even their individual acts subsequent to the murder have been brought in, and an attempt has been made to introduce the separate confession of Joseph Knapp. On this point we take the law to be clear, that the acts and declarations of one conspirator, in the absence of the others, is no proof against them of any thing but of the object of the conspiracy. They cannot be used to enforce the proof that the conspiracy existed, or that the defendant was a party to it, but simply to show its design. And, although the evidence has been admitted, because it was difficult to distinguish its tendency until it was heard, you are to receive it no farther than is warranted by this rule of law. If then, as the prosecutors contend, the evidence of Leighton is sufficient to indicate the object of the conspiracy—if the words he so ingeniously overheard can, as is said, mean nothing, but that the two Knapps and Richard Crowninshield had agreed that the latter should murder Captain White, then all the remaining proof of the conspiracy is superfluous. The only object for which it could legally be used was accomplished at the first step. The Wenham Robbery, the Robbery of the Knapps' house, the preceding letters of Joseph Knapp to Stephen White and to the committee, and such other circumstantial stuff that has been introduced, may be used to aggravate the general appearance of the whole transaction, but they have no bearing on the case of the Prisoner. The letters may be proof that Joseph Knapp was guilty, but what is that to the Prisoner? He is not to stand or fall by the subsequent and independent acts of Joseph. Why are these evidence against him, more than Joseph's confession given to Mr.

Colman? They are but confessions made after the fact and without the knowledge of the Prisoner. As to the robbery, it may have been real or pretended. But whether real or pretended, what has it to do with the murder of Capt. White? Not a particle of extrinsic proof of its falsehood, or of its connexion with that event has been produced. It has served as a basis for much irony and indignant denunciation; but it was believed by Mr. Palfray who published it, and by the Committee. And yet you are called on from its intrinsic incredibility to convict the Prisoner, not only of the falsehood of the story, but as a corollary of the murder of Mr. White. Considering these things as of no weight in the cause, I shall pass by them without further remark. Some other circumstances may be dispatched in the same manner. The conspirators wore daggers—the proof is that the Crowninshields habitually wore them before the murder—and that the Prisoner never had one until long after. And whether he then wore it for murder, or in boyish bravado, you may judge from Layton's account of the manner in which he used it upon him. Pleased with his new weapon, he "pricked me Bull Calf till he redded," and how much of Layton's testimony is to be ascribed to that, is matter of no great consequence, so incredible is the whole.

So of the five franc pieces. The proof is that Joseph received five hundred on the 21st of April—and that George and Richard Crowninshield spent nine between that time and their arrest—nine five franc pieces! Richard was to receive, according to Palmer, one thousand Dollars for the murder! and we are called upon to account for nine of these pieces, when the whole five hundred would not have been half of the price agreed to be paid. And why should not the whole five hundred have been paid? and if they were, why are not more than nine traced to the Crowninshields? The coin, besides, is no uncommon one—they carry no ear mark—the witnesses tell you they pass currently—commonly—here. They are the regular return from Point Petre; and in large quantities, they go into the Bank—in small quantities, they go into circulation. But suppose it otherwise, how does this prove Francis Knapp guilty of this murder? Is he shown to have any of this pernicious coin? All the evidence about them is of the nine spent by the Crowninshields and that Joseph Knapp gave Hart three to buy meal for the family. Besides, the proof of any communication between Joseph and Richard after the murder completely fails. When were these five franc pieces paid to Richard? The whole evidence is, that about the last of March, Richard Crowninshield stopped at Lummus's tavern with a stranger who asked if Capt. Knapp had been there lately;—they left their chaise and walked away together. Afterwards, about the 20th of April, Richard and another person, stouter than the prisoner, called at Lummus's in the evening and spent a five franc piece.—Hart and Layton testify that somewhere about that time Frank Knapp came in a chaise to Wenham with a stranger who sat in the chaise at the door an hour or an hour and a half. They differ very much in their accounts of the transaction, but neither pretends to know or believe that the stranger was Richard; or that any money was paid. In fact, money could not well have been paid at that time in five franc pieces without observation. Neither Hart nor Layton observed any thing like it. All they know is, that there was a long conversation between the two Knapps in the house and between them and the stranger at the door. They saw nothing and heard nothing to show what was the subject of those conversations.

One word about George Crowninshield; he has been shown by the government's witnesses to have been in Salem that evening and to have gone to bed at the house of Mrs. Weller about eleven. The prosecution has proved an alibi for him and we shall not disturb it. On the contrary we have shown you by evidence, which is unnecessary to recapitulate, that he came to Salem with Selman and Chase on other business, and we have traced him from place to place through the whole evening.

It seems to be the object of the government to show that he could not be the man in Brown street. We agree that he was not; but we think it material to show you also that neither was he any where in the neighborhood of Mr. White's house at the supposed time of the murder. The testimony of Selman, corroborated as it is at every step, establishes that fact. Whoever then, was the man in Brown street, he was the only one in the vicinity of the house, and that will become a material fact when we consider the purpose for which he was there.

Much use was made on the former trial of the testimony and books of Osborne, the stable keeper. It appears by them, that the prisoner was in the daily habit of riding, and often to Danvers, and to Wenham, early in the month of April. That he went to Danvers on the 2d of April, as testified by Palmer and Allen, and afterwards on the same day hired a chaise to go to the Springs. That on the 6th of April he went to Danvers and after that did not ride till the 19th. We see little than can fairly be inferred from all this but that there was a frequent intercourse between the Prisoner and the Crowninshields,—a circumstance undoubtedly unfavorable though slight, and between him and his brother Joseph's family, a matter from which nothing can be inferred. Two or three circumstances however, attending these rides, have been selected as highly suspicious. In the first place the frequency of them just previous to the time of the murder and the interruption of them just after. If the books are examined it will be found that these rides are as frequent in the months of February and March as in April, making due allowance for the difference of weather. The Prisoner returned from sea in January and he appears to have hired Osborne's horses almost every day from that time until the 6th of April. That evening was marked by the failure of his father, as well as by the murder of Capt. White—a circumstance quite sufficient to account for the discontinuance of his visits to the stable, and also for another fact, somewhat relied upon.

The place, it seems, for which the chaise was hired on the 6th of April, is still blank in the book. Now Mr. Osborne testified that it was the habit of the prisoner to fill out and rectify the charges against him by his own memorandum book; but this he had no opportunity of doing after the 6th until the 19th; and it does not appear that he ever was asked where he had been on the 6th; so too of the entry on the 2d. The chaise was hired for *the springs*; but those words were afterwards struck out, and *to ride* put in their place, in the prisoner's hand-writing. But the first words are not so erased as to be concealed; they are merely crossed out with a single line of the pen; and this was in conformity with the practice permitted by Mr. Osborne, who tells you he had perfect confidence in the prisoner, and suffered him to have free access to his books to make his own charges. One circumstance more, and I have done with these minor points.

It is thought very strange, that on the 6th the prisoner ordered his chaise brought to the Court-house, instead of getting in at the stable. A hundred innocent reasons may be imagined for that, while it is hardly possible to think of one in any way connected with the murder. He was much more likely to be noticed if seen getting into a chaise in Court street, than at the stable, because one was a usual, the other an unusual thing. The fact that he had a chaise was as much known at the stable; and if he wished, to conceal the direction in which he rode, a much simpler expedient would have answered the purpose. Why did he not start the contrary way, and drive round the town until he could escape unnoticed? He may have had an errand in Court street; he may not have wished to be seen leaving the stable on the day of his father's failure. It is so simple a thing that any reason is enough, and none need be sought for. But the most indifferent acts of the prisoner have been traced out with inquisitorial diligence, and magnified into proofs of crime. Is there any thing in all these circumstances inconsistent with the pris-



oner's innocence? It is not enough that they are consistent with his guilt. Before circumstantial evidence can amount to proof, it must be impossible to explain it without supposing guilt. So far, certainly, all may be as well explained without that supposition. And yet, from the way in which these things have been heretofore insisted on, it would seem that they were looked upon as conclusive evidence. It seems to be enough if the prisoner can be found any where or doing any thing on the day of the murder, which might, by any supposition, connect him with it. A thousand suspicions, it has been well said, do not make one proof. And what are these but possibilities? There is not one among them that deserves the name of a probability. A thousand such possibilities would hardly make one suspicion.

But one thing that has a little more shew of proof, or rather of suspicion, must be disposed of, before we come to the direct evidence of the conspiracy. I mean Mr. Burns's story. Burns is a Spaniard; and although I would not discredit him on that ground alone, I cannot have the same confidence in his oath, I should in that of one of our own citizens. He hardly speaks English intelligibly, and there is some doubt whether he was finally understood as he meant. His story is intrinsically improbable, and he has discredited himself by his own contradictions. He tells you the prisoner called at his stable and asked if he were alone; being assured that no one was there, he wished to be yet more private, and asked if he could speak with him in the chamber. And all this secrecy was to tell Burns, that the Committee had heard that he [Burns] was out on the night of the murder, and that they suspected him—and that if he saw any friends that night, he had better hold his tongue about it, and that Joseph Knapp and the prisoner were his friends; and then follows an idle tale about the prisoner's accusing Stephen White of the murder, and then threatening Burns with his dagger because he would not believe it. Now what possible object could the prisoner have in all this but to bring himself into suspicion? No one had at that time whispered a suspicion against him. Burns had not pretended to have seen or heard any thing of him that night, near the scene of the murder. But it may be asked, what motive could Burns have to fabricate this story? It is in vain to deny that there is a sufficient motive. We have seen the operation of it on more than one witness, and that Mr. Burns is above its influence I see no special reason to believe. You observed the manner in which he testified,—how zealously he defended Mr. Stephen White from the aspersions of the prisoner,—and how impossible it was for the Counsel to obtain any thing from him but impertinence by the mildest cross-examination. Such a man as Burns well understands what is the source of favor in this trial. He as well as others sees that the prisoner is a helpless and friendless culprit, pursued by all the wealth and respectability of the town. And can you see in this no motive that could lead such a man as Burns to claim his share in the merit of his conviction?

But be his story ever so probable, you cannot believe it—he swore positively on the first trial that this happened after the Wenham robbery, and on this he has sworn positively that it was nearly three weeks earlier—he has described the prisoner's dagger as totally unlike any one he ever had, and differently at his two examinations. Let him and his story go for what they are worth—I trust that the prisoner is in no danger from them.

I come now to what is called the direct evidence of the conspiracy. It rests on two witnesses, Leighton and Palmer; or rather it rests on Leighton alone, for without his testimony that of Palmer would not be admissible. Palmer pretends only to have had a conversation between the two Crowninshields in the absence of the prisoner. Now to make this admissible against Frank Knapp, a conspiracy must first be established between him and the Crowninshields. For that purpose Leighton overhears the

two Knapps tell each other the whole story, while he listens behind a stone wall. Now it may be supposed that this very deficiency in Palmer's story is proof of its truth. Not so. Palmer's story was first told and put in writing to convict Richard Crowninshield, and it would well enough stand alone for that. But when Richard was out of the way, and Frank became the principal, a connecting link was wanting; and to furnish this is Leighton's office.

And what is Leighton's story? Of all the gross improbabilities that ever were laid at the foundation of a cause, this is the most gross. It is just the clumsiest contrivance of a play, where the audience is informed of what has taken place behind the scenes by the actors telling each other what they have been doing together. If it were told with the utmost consistency, could you believe it for a moment? Why, gentlemen, do but listen to it. He tells you that Frank Knapp came to Wenham about ten o'clock, (and Potter says he told him he came there immediately after breakfast, which would be about seven,)—that he and Joseph were together all the morning in the fields, and that after dinner he left them together talking at the gate by the house, while the witness went down the avenue to his work. There was abundant opportunity, then, for them to talk in private about what most concerned them; but after the witness had passed through the gate at the end of the avenue, and taken his place behind the wall, he heard voices in the avenue; without rising, he peeped through the gate, and saw the two Knapps *about twenty-five rods off*, coming towards him; that they ceased talking until they arrived within three feet of the wall, and then began this dialogue: Said Joseph, "When did you see Dick?" "This morning." "When is he going to kill the old man?" "I don't know." "If he don't do it soon I won't pay him,"—and they then turned up the avenue and walked away; and this is all the witness heard.

Now is any thing more than a bare statement of this story necessary to show its falsehood? For what purpose, under Heaven, could the Knapps have postponed all conversation on this most interesting subject till that very time? They had been together all the morning; they were plotting a murder; and Frank had been that very day to see the perpetrator; and yet neither Joseph had the curiosity to ask, nor Frank the disposition to speak of the matter, until just as they reached the place of Leighton's ambush; and there in an abrupt dialogue of one minute's duration, they disclose the whole secret, and walk back again. Not a word more is heard by the witness. The conversation evidently began and ended with these words. Really it is too miserable a contrivance to deserve much comment. But there is a remarkable mistake about this story which stamps it with falsehood. Leighton fixes the conversation on Friday the second of April. And why on that day? Because he knew, as well as every person who has read the newspapers, that on that day Frank did see Richard. But unluckily he fixes him at Wenham at the very hour in which it now appears, from the testimony of Allen and Palmer, that he was at Danvers. Leighton says that Frank came to Wenham at ten, and said he had seen Dick that morning; but it now appears that Frank did not go to Danvers until two o'clock, and at that very hour Leighton pretends to have heard this conversation at Wenham. Again, Palmer tells you that at that interview at Danvers, the plan was first proposed to the Crowninshields—that George spoke of it to Richard and himself as what he had just heard from Frank; and yet from this dialogue at Wenham it seems that Joseph was impatient at the long delay of Richard. "When is Dick going to kill the old man?" "If he don't soon I won't pay him." How are these things to be reconciled? Leighton tells you too that he never mentioned this conversation until after the murder. And why not? Why, forsooth, "he did not think of it." He had heard a plain palpable plot of murder contrived by his own master, and yet he did not think of it! He did not tell it to Mr. Davis when he joined him at his

work, nor to Hart who slept in the same room with him; and when he hinted after the murder to Starrett, at two different times, that he "knew something," and had "overheard something about the murder," Starrett had not the curiosity to ask him what it was! He is directly contradicted by Hart, both at the time when he told him of it and as to the circumstances of Richard's supposed visit to Wenham. Hart says he never heard of this conversation until after Leighton's examination at Salem, and that Leighton told him the Committee brought out a warrant to commit him to jail if he did not tell what he knew—facts both of which Leighton denies on the stand. Now what account does he give of the manner in which his evidence was brought out? He says he was summoned to attend court, taken out of the field where he was at work, and carried to Mr. Waters's office—he was kept there forenoon and afternoon, more than four hours, closely questioned and threatened, but he told nothing. Why did he not tell? On the first trial he swore he remembered well enough, but did not choose to tell—to be sure he swore both ways about it, but he finally said he did remember and would not tell; and on this statement a most ingenious argument was built by the counsel in his favor. "He would not betray his employer; improper as it was to deny what he knew, he had fidelity enough to refuse." But on this last trial he takes all that back; he swears positively he did not remember a word about it. Equally regardless of his own oath and the argument of the counsel, he denies the whole. He says it all came into his mind about two days after his return to Wenham—the very words. What brought it to his mind he cannot tell. Now what credit can you give to this boy and his story? But one of the most remarkable improbabilities of it is yet to come. He says he told the gentlemen at Mr. Waters's office that if they would come to Wenham the next day, he would tell them all he could remember. That was on the twenty-second of July. Now do you believe it that were true they would not have gone? When every body in Salem was inquiring about the murder, and some of the gentlemen at Mr. Waters's office had been doing nothing else for months before, and when they had taken all these pains to extract from Leighton what he knew, do you believe that after such a promise they would neglect to follow him up? And yet he tells you he heard nothing from them until ten days after that time. Then they came to Wenham and he told them all about it. Now, gentlemen, if you had seen as much as we have of the diligence of the Committee and Sub-Committee in looking up testimony in this cause, you would not think this the least improbability in Leighton's story. Consider how important his testimony is. Without it, Palmer's, and the whole evidence of the conspiracy, would be useless. It is the very corner stone of the prosecution. And yet it was not thought worth looking after for ten days immediately preceding the trial. Again; we shall be asked, what motive has Leighton to swear falsely? and we answer, Fear, favor, and hope of reward. He was told at Waters's office he should be made to remember—he said he was threatened with a warrant, and he knows of the immense rewards that have been offered. He remembers the pricking with the dagger, and he swears now to you that if Knapp escapes hanging, he expects he will kill him. Under all these circumstances, I put it to your consciences to say if you can take this boy's word against the life of the prisoner. If you disbelieve it, then you must wholly reject Palmer's testimony, and all evidence of what was said and done by any one but the prisoner, or in his presence. There is absolutely no other evidence to connect the prisoner with Joseph or the Crowninshields in this matter.

But who is this Palmer, this mysterious stranger who has been the object of so much curiosity and speculation? He is a convicted thief. We produce to you the record of his conviction of shop-breaking in Maine. He is an unrepenting thief, for he tells you on the stand he cannot speak

of the stealing of Mr. Sutton's flannels in Danvers, committed since his discharge from the State Prison, without criminating himself. Mr. Webster (the witness) tells you his character among his neighbors in Belfast is as bad as it can be. He tells you himself that he has passed in his wanderings from tavern to tavern, sometimes by the name of Palmer, sometimes that of Carr, sometimes that of Hall (the alias of the notorious Hatch,) and sometimes that of George Crowninshield. The latter name he gave at Babb's house when he was called on to settle his bill; and whether he settled by a note he *cannot remember*; but Mr. Babb remembers that he did, and signed that note *George Crowninshield!* And how came Mr. Palmer a witness before you? He was arrested as an accomplice in the murder at Prospect; committed to Belfast jail; brought up by land from Belfast in chains; put in to a condemned cell in Salem—remained in jail two months, neither committed for trial, nor ordered to recognize as a witness; but kept for further examination at his own request, until he is brought out and made a free man on the stand. Now what is this man's credibility? If his conviction had been in Massachusetts he would have been incompetent; he could not have opened his mouth in court. But the crime is the same—the law violated is the same—and the infamy and the punishment are the same in Maine as in Massachusetts—and his credibility is the same. Add to that conviction, his subsequent theft, falsehood and forgery, and you have left in him but a bare possibility that he may speak the truth. As to his temptation to testify against the prisoner, you see how he was brought here, under what liabilities he stands, and what is the price of his discharge. He tells you himself that, though a disinterested love of public justice first moved him to inquire into the matter; he thinks he deserves some little pecuniary reward for his exertions; and doubtless he thinks that reward will depend something on the success of them. But what is his story? It is that being himself concealed at the house of the Crowninshields in Danvers, he saw Frank Knapp and Allen come there on Friday, April second, about two o'clock; that Frank and George walked away together, and after their return Frank and Allen rode off—that the Crowninshields then came into the chamber where he was, and George detailed to him and Richard the whole design and motive of the murder as a matter then for the first time communicated. Now perhaps there is nothing intrinsically very incredible about this story, except its too great particularity. If it be false, it is so artfully engrafted on the truth, that Frank Knapp was there at that time, and had an interview with George alone, that it would be almost impossible to detect it. Palmer too must be allowed the credit of ingenuity, whether his story be true or false. It is impossible for any one in his situation to have testified with a more artful simplicity. And I admit too, that he has had the good sense to tell no unnecessary falsehood. The only instance in which he has tripped, is his saying that George Crowninshield told him on the ninth of April that he had melted the daggers the day after the murder for fear of the Committee of Vigilance; whereas, that committee was not appointed until late in the evening of the ninth. How that little impossibility is to be disposed of is not very material. But this conversation is too particular. Like Leighton's, it goes too much into all that the case requires. Why should the Crowninshields tell all this to Palmer without first sounding him? He says he rejected their offer immediately. Would they risk detailing the whole plan to him before securing any indication on his part of assent? Nay, after having communicated it to him and after he had refused to have any part in it, would Richard have gone on to execute it? He was not a man to trust his life to the keeping of such a witness as Palmer, who had refused to become an accomplice.

There is one circumstance in which the story is a little too ingenious. George speaks to Richard and Palmer of Stephen White as a certain Mr.

White that lived at Tremont House in Boston; and then witnesses are brought in to prove that Mr. Stephen White actually lived there at that time. This is too shallow. Did not the Crowninshields, with their Salem connexions, know Stephen White by name? There is not a man in the county that does not know him. This is meant to look like corroboration; but it looks much more like contrivance. Now such a story from such a man deserves no manner of credit unless corroborated by other testimony. Is Palmer corroborated? In the immaterial circumstances of his story in which he had the sense to tell the truth, and no temptation to lie, he is confirmed by other witnesses. But on the only important point he stands alone and unconfirmed. The conversation between him and the Crowninshields rests, and must of necessity rest, on his single statement. But it has been said that his letter corroborates his story. How can that be? Would he be such a fool as to swear now to any thing inconsistent with his letter of which we had a copy? The mere fact that his testimony is consistent with his own letter amounts to nothing. But does that letter contain any thing which he might not well have known whether his story be true or false, and which is now confirmed by any other witness? Not a word. It states that he knew what J. Knapp's brother was doing for him on the 2d of April, and that he was extravagant to give a thousand dollars for such a business; and that is all. The rest is but vague and unmeaning menace. Now it is undoubtedly true that Frank Knapp was at Danvers on the second of April, and had a private conversation with George; and that Palmer was at Danvers and saw him. And that single fact is the only one contained in the letter which is corroborated by any other witness. That he was there to engage the Crowninshields in this business and that they were to have a thousand dollars, comes from Palmer himself and from him alone. Even Leighton's story though intended to corroborate it, contradicts it by inconsistency in time, and in the age of the plot. But he says nothing of the thousand dollars. But why should Palmer venture to mention a thousand dollars if that was not the sum offered? And why should he have written the letter at all, if he knew nothing about Frank's business at Danvers? The solution is easy. It supposes, indeed, some skill in Palmer, but we have seen enough of that. Consider when this letter was written. Not until after the arrest of the Crowninshields. If he had really heard this plot laid, why did he not give information of it immediately on hearing of Capt. White's death, and of the immense rewards offered for the discovery of the murderer? He tells you he wrote that letter to bring the matter to light; from a pure love of public justice. Public justice has been rather a hard mistress to Palmer; but he is not the less faithful to her. Now why did not that love of public justice induce him to inform against the Crowninshields and Knapps before any body else suspected them, and while public justice had some thousands of dollars to give him to obliterate the remembrance of her castigations? He had the whole matter in his own breast. He had heard every word of the plot. If they were guilty he had information enough to lead to their detection. Yet he waits five weeks after the murder and a fortnight after the arrest of the Crowninshields and then writes this letter to Knapp, demanding money—but in fact, as he tells you, to get evidence against him. Is this credible? But what led him to suspect the Knapps? What was more easy? He probably knew that J. Knapp's mother-in-law was an heir of White—he saw F. Knapp in private conversation with George Crowninshield four days before the murder, and he saw in the papers that the Crowninshields were arrested as the murderers. It required less than Palmer's shrewdness to put these things together. As to the thousand dollars, it may be his own pure invention;—there is no other evidence of it;—or it may be that he heard the Crowninshields say after Frank left them that they expected a thousand dollars without saying from what

source. His letter is therefore no corroboration at all. It does not contain a fact proved by any body but himself except that Frank was at Danvers on the second; nor is Palmer's story on the stand corroborated by any other witness in a single fact, that had not been published in every newspaper in the State, weeks before he testified.

This is the evidence of the conspiracy. I have but two remarks to make on it. If you could believe it on such evidence, the only effect of it would be to shew that Frank Knapp was an accessory; and it makes nothing said or done by J. Knapp or the Crowninshields evidence against the prisoner. For the very proof relied on to establish the fact of the conspiracy proves equally well all that of which such acts and declarations are legal evidence; that is, the design and object of the conspiracy.

The most, then, that can possibly be inferred from this evidence, bad as it is, is that the prisoner was an accessory before the fact; and that if he were in Brown street at the moment of the murder, and in a situation in which he could give assistance, there would be a presumption that he was there for that purpose. We are willing to meet the government on that ground. We deny that he was there; and we deny that the man who was there could by possibility have given any assistance.

Two men were seen in Brown street at half past ten, of whom one is alleged to have been the murderer, and prisoner the other. But what proof is there that the murder was committed at that hour? If that fails, the whole case fails. Was there any thing in the conduct of the men to shew it? One man was seen waiting half an hour in Brown street, and a little before eleven he was joined by another who came either from the common or from Newbury street; and might as well have come from one as from the other, as he was first seen in the middle of the street. The man that came from the eastward did not run; he walked directly up to the other, held a short conference with him; they moved on together a few feet—stopped again; talked a few moments and then parted; one stepping back out of sight and the other running down Howard street. Of the two witnesses that saw them, Bray thought they were about to rob the grave yard; Southwick suspected; but what to suspect he did not know, and his wife suspected that he had better go out again to watch them. A murder was committed that night in the next street, and this is all the proof that these were the murderers. A club indeed was afterwards found in Howard street; but neither of these men had any visible weapon.

What say the doctors? Dr. Johnson says he saw the body at six and then thought it had been dead between three and four hours—Dr. Hubbard now thinks longer; but says at the time he agreed with Johnson. There is pretty strong proof that the murder was in fact committed about three o'clock.

Savary saw a man between three and four come out of Capt. White's yard and walk up Essex street; but meeting the witness he turned about and ran down as far as Walnut street. Walcutt about the same time, and near the lower end of Walnut street met, probably, the same man, coming towards him; on seeing him he turned about and walked the other way. Now which was most likely to be the murderer, the man who might have come either from Newbury street or from the Common, at eleven, or the man who was actually seen to leave White's yard at half past three, and twice turned back, and once ran away to escape observation? But here we are met with a dilemma on the second trial. What I have stated was the whole of Savary's testimony on the first trial. He was then asked whether he had ever heard of that man since and he said, no. Now he is asked whether he has seen that man since, and to the utter astonishment of every one, after giggling like an idiot, he says he thinks it was the prisoner! And this is seriously taken up by the counsel for the prosecution, and Dr. Peirson is examined to prove that the stabs were made with different instruments. You have heard his rea-

sons for it. His opinion is that some of the lower wounds, being longer than the upper, must have been made by a broader dagger or a sword cane; these lower wounds were oblique and of various lengths, but he thinks that a dagger however sharp at the edges, driven obliquely into the body, will not make a wound longer upon the surface than the breadth of the dagger. This seems very much like saying that the human skin may be pierced, but cannot be cut. It is certainly contrary to common observation if not to common sense. Dr. Johnson says he saw no proof of more than one sharp instrument. But for what possible purpose, if Frank Knapp had met the murderer in Brown street, and heard that the deed was done at eleven, should he have gone into the house again, and stabbed the dead body? Like another Falstaff did he envy the perpetrator the glory of the deed and mean to claim it as his own? or was it for plunder? No—for the money was not taken. The two suppositions that the prisoner was engaged in the murder at half past ten, and that he visited the house at half past three, are totally irreconcilable. We deny that he was in Brown street, and we will take all the risk of Savary's testimony. This is but one of the many examples of the rapid growth of evidence in a popular cause. Savary's first story was true; he has told it so from the first day after the murder, and it is confirmed by Walcutt; but this last edition of it is as foolish as it is wicked, and needs no refutation or comment to those who saw and heard him on the stand; the manner was as indecent as the matter was absurd. The government must satisfy you beyond reasonable doubt either that the murder was committed at half past ten, or that the prisoner was the man who left the house at half past three. You cannot believe both; and can you say that you are satisfied of either? Is there not a great, a very reasonable doubt of both? You must not convict the prisoner between the two. You must be as well satisfied of one as if the other did not exist. Which then will you take? That he was the man seen by Savary? If Savary were honest and credible, you would have but his opinion from a glance in a dim and misty night, (for it grew more dark and cloudy towards morning;) a thing certainly not to be relied upon, standing alone, as it does. Was the murder committed at half past ten? What is the proof of it? and what was the man doing in White's yard at half past three? and why did he run when he was seen? Which acted most like a murderer, the man that came into Brown street, or the man that ran from the yard? Which was the hour most appropriate to go horrible a deed? That at which a party was breaking up at Mr. De-land's, the next house to White's, or the still hour before daylight, when no person was abroad but by accident? And what is the fair result of the doctors' opinions on the view of the body? All these things concur to fix the murder on the man who left the yard in the morning. If you believe that was Frank Knapp; if you can say on your oaths that Savary's testimony satisfies you of it beyond a reasonable doubt, be it so—but it will satisfy nobody else. I have no fear of it.

There remains then, only the supposition that the murder was committed at half past ten; and then the question is, Was the prisoner the man in Brown street? And on this point we have the most deplorable examples of the fallibility of human testimony, and of the weak stand that even common integrity can make against the overwhelming current of popular opinion. The witnesses are four. Webster and Southwick swore the same on both trials; Bray and Myrick have varied most essentially. As it now stands, Myrick and Webster are of little importance; Myrick saw a man in a frock coat who he now thinks was the prisoner, standing at the corner of Brown and Newbury streets from twenty minutes before to twenty minutes after nine. The man appeared to be waiting for some one; and when any person approached his post he walked away and then turned and met him; he did this several times. Now whether that was or was not the prisoner is not in itself of any im-

portance. It is hardly to be believed that a man who was to be engaged in a murder at half past ten would be seen lingering near the spot for forty minutes at the early hour of nine. It would, if true, be no unfavorable circumstance. For what purpose connected with the murder was he there at that hour? Did the murderers take their measures so ill that one was on the watch for the other in a public corner near the scene of the murder an hour and a half before the time? Besides, where are the persons whom Myrick saw meet the prisoner at the corner? he spoke of several. Why are they not found and produced? It is impossible they should not be found. We have been loudly and gravely called upon to produce the man in Brown street if Frank Knapp was not he.

It is thought very strange that if it were not he, some friend of justice should not come forward and own himself to be the man, at the risk of taking the prisoner's place at the bar as a principal in the murder. So, too, it was asked, if Richard Crowninshield was not the man that joined him in Brown street, why don't the prisoner show where Richard was? And yet we are told that the prisoner stood half an hour at a corner, and was met by various persons, but not one of those persons is produced to prove it. When it is the very question, whether it was the prisoner or not, and Myrick tells you himself that others saw him where they certainly would have recognized him. Now it is a principle of law that no evidence is good, which of itself supposes better in existence, not produced. Myrick's evidence, then, is good for nothing, until those who met the prisoner at the post, are produced. Besides, how did Myrick recognize him? He had never known him—he never knew him until he was brought up for trial—nearly four months after the night of the murder, and in a different dress. He was then told, by a bystander, which was Frank Knapp. Being asked at the first trial, who he thought the man at the corner was, he said he thought it was the prisoner, not from what he had observed, alone, but partly from what he had heard about him. Now this was obviously no evidence at all. What a man thinks from what he hears, is nothing. What he hears, is no evidence; and still less, what he thinks about it. But at this trial, Mr. Myrick makes another step: he says he thinks it was the prisoner, from his own observation alone, making allowance for the difference of dress. Now how much of an allowance that is, depends on how much of the appearance of a man, seen four or five rods off by a perfect stranger, in a light, but cloudy evening, consists in his dress. It can consist of nothing but dress, figure, and manner.—Mr. Myrick's evidence, therefore, amounts to this and no more: 'I think the prisoner's figure and manner the same as those of a man I saw four months ago, under the circumstances above described.' This is so slight, that the difference in his testimony is not worth mentioning, except to show the growing tendency of the whole evidence.

About the time that Myrick leaves the prisoner in his frock, at the corner, Mr. Webster overtakes him in Howard street, in a wrapper. He passed him without much observation; he did not see his face, but he thinks it was the prisoner. It is of no consequence whether it was or not. The probability, from the change of dress, is that it was not. And this reminds me of a remark made on the last trial, that such differences and sudden changes of dress were to be expected for the purposes of disguise when such business was on foot. With great deference to the learned counsel, it seems to me highly improbable. What is the evidence on this point? The prisoner is supposed to have had on his usual frock and cap, at the corner, from a quarter before to a quarter after nine; at half past nine to have walked in Howard street, in the same cap and a wrapper; to have sitten on the steps of the rope-walk, in his own cap and camblet cloak at half past ten, and in five minutes after, to have been seen in the same street, in his frock. Now I agree with the learned counsel, that on such an occasion, disguise is to be expected; and farther, that it is entirely incredible any one should go undisguised. But what disguise is here?



The wrapper does not, indeed, correspond with any known dress of the prisoner; but in every other situation in which he is seen, he is recognized by his usual dress, and by that alone. Now it is incredible enough that a man should, in a light evening, be out in his usual dress, to commit murder in his native town; but that he should think to disguise himself by putting on and off his own cloak, as well known as his own coat, and thus be seen in two of his habitual dresses, is a little too much to ask you to believe. Why not assume one effectual and complete disguise? Or, if he feared being seen too often in one dress, why not put a strange cloak over a strange coat? And why wear his own cap the whole evening? The counsel has said this was a murder, planned with great skill—nothing could be more unskilful than the prisoner's part, if he was there.

But let us come to the more material part of this testimony. Mr. Southwick swears positively to having seen the prisoner on the rope-walk steps at half past ten, in his own cap and cloak—that he passed him three times, and watched him twenty minutes. He has known the prisoner from childhood. He did not speak, though he felt very suspicious of him. That he went into the house and took off his coat and came out again, and the man was gone. He met Mr. Bray, who pointed out a man standing at Shepard's post, on the other side of the street, in a frock and cap like the prisoner's. Bray and he stopped and observed him till he left Shepard's post, walked down the opposite side of the street, and passed them and stood at the post under Bray's window. They then crossed over and entered Bray's house, passing within twenty feet of him. Southwick says he did not recognize the man in the frock coat, but supposed him to be the same he had seen on the steps, because there was no other person in the street; and because he had the same suspicions of him!—Now this testimony of Mr. Southwick is open to two or three important objections. In the first place, if Frank Knapp were on the steps to aid in a murder, at that moment in execution, and expecting to be joined by the murderer, would he have permitted Southwick to pass him three times and watch him twenty minutes? He knew Southwick as well as Southwick knew him. Southwick says he dropped his head each time, as he passed him, so that he could not see his face. So there is a foolish bird that puts its head in a hole and thinks itself safe if it cannot see its pursuers. Murderers are apt to be more cautious. He says he knew it, then, to be Frank Knapp, and told his wife so. But though he thought the man, he and Bray saw, was the same, and both wondered what mischief he could be about, he never told Mr. Bray who he thought it was. Is that possible? Yet, both he and Bray agree in it. But the greatest impossibility of all is, that he should not have recognized the prisoner, if it was he, in his usual dress, while walking down the opposite side of this narrow street. Chadwick tells you it was so light, he easily distinguished Mr. Saltonstall, farther off, the same evening. Now how inconsistent is this story with the supposition that that was the prisoner. He knew Frank Knapp familiarly, he saw him and recognized him in his cloak on the steps—he saw a man on the opposite side of the street five minutes after, who he, for some reason, [not connected with his appearance, thought was the same :- and yet though that man wore the usual dress of the Prisoner, and walked down the street by Southwick, when it was light enough to distinguish persons across the street, and though Southwick passed within twenty feet of him to go into Bray's house, he did not recognize him as the prisoner. Again, he thought the man in the frock was the same as the man in the cloak; he knew the man in the cloak was Frank Knapp, yet he and Bray wondered who the man in the frock could be, and Southwick never thought of telling Bray it was Frank Knapp. Now if Southwick's testimony were believed, it not only would not prove that the prisoner was the man at the post, but it would prove almost conclusively that it was not. It is impossible that Southwick should not have known him if it were he, and should not have told

Bray if he knew him on the steps. Besides Southwick is contradicted by Mr. Shillaber—he told Shillaber that “for ought he knew the man in Brown-street might be Richard Crowninshield, and Frank Knapp the other—he could not tell who they were.” And how does Southwick explain this? he says Mr. Shillaber’s question was, “might not be the man that came from Newbury-street be Richard Crowninshield?” A probable question indeed for Richard’s Counsel to ask! But one word more with Mr. Southwick.—When Chase and Selman were indicted for this murder, he went before the Grand Jury as a witness at Ipswich—he there swore that the man he saw in Brown-street was about the size and height of Selman, and said not one word about Frank Knapp! On this testimony, and that of Hatch the convict, was Selman indicted and imprisoned as a felon, eighty-five days; until another Grand Jury assembled, and as Hatch’s oath was inadmissible, and Southwick had turned his testimony against Knapp, Selman was discharged. Now when was there any thing more abominable than this except in form? It is not to be sure within the reach of the law, but how is it in conscience? He swears now that he then knew it was Frank Knapp; and yet he indirectly swore then that it was Selman, and what is the contemptible evasion by which he tries to escape! Why, that it is true that he was about the size of Selman, and he was not asked whether it was Frank Knapp! If he tells truth now, he knew then, that by one word of truth he could clear Selman of all suspicion of being in Brown street; and he wilfully *suppressed that truth*. Now why is he a more credible witness than if he had been convicted of perjury? It is said he told his wife it was Frank Knapp. She says so, and it may be true; but it is not the very best corroboration. It is not of one half the weight of the fact that he did *not* tell it to Bray. Still that only goes to the identity of the man on the steps. It leaves the man at the post still nameless, and that is the important question. Southwick does not pretend to identify him. Besides, where was his cloak? It seems that Joseph Knapp left his cloak at Burns’ stable in St. Peters’ street, and it is suggested that Frank might have got there the one that he wore. But Southwick swears the cloak was a brown camblet and Joseph’s is a plaid. Besides how could he have gone to Burns’ stable without meeting Bray, who came down St. Peters’ street?

Now this, with the addition of a statement from Bray, that he could not tell who the man in Brown street was, though he was about the size and shape of the prisoner, and wore a cap and full skirted coat, such as the hatters and tailors say Frank Knapp and a hundred others wear, was absolutely all the evidence on the first trial that the prisoner was in Brown street. Two remarkable facts have happened since; one is that Mr. Bray, one of the most honest witnesses in the cause, has on this trial, to the same question, answered that he had no doubt the man he saw in Brown street was the prisoner. Now I have no disposition to accuse Mr. Bray of any intentional mis-statement or over-statement; but here is a direct and flat contradiction. One week he says, “I have seen the prisoner in jail and in court, and I cannot say he was the man in Brown street;” and the next week he says, “I have seen him in jail and in court, and I have no doubt he is the man.” And I am interrupted to say that this is no contradiction. Let the gentleman reconcile it as he can; I do not misquote the witness; such is and such was his testimony. Nay more; though he said that he had thought more of it since the last trial, and become more certain—a strange way of correcting an opinion formed on what was seen four months ago—he said too that when he first saw the prisoner in jail he recognized him by his dress and motions. Now there is no reconciling these things, let them be explained as they may. Both cannot be true;—which will you believe? That he does or does not recognise him? Mr. Bray is one of the Committee of Vigilance—let that go for what it is worth and no more. But which is most likely to be right? his first testimony, the result of the reflection of three months, before he knew

what would be the event of the trial ? or that result connected by the revision of a week, when he knew that the first trial had failed on that very point ? I repeat that I accuse Mr. Bray of no wrong. But I cannot acquit him of that subjection to the power of imagination which has brought others here, as honest as himself, to swear positively to things that never did and never could happen. We shall see that presently. We claim his first as his true testimony. He *cannot* say that it was the prisoner who was in Brown street. He did not know the prisoner until he saw him arrested on suspicion of this crime. He then went to see him to compare his appearance with that of the man he had seen in Brown street nearly two months before. Of what value is an opinion, formed under such circumstances ? And which of his two statements would it be most safe for Mr. Bray to stand by ? Can any man, with such means of judging, say with propriety he has no doubt ? The rest of Bray's testimony I need not repeat ; I have already stated the substance of it in speaking of the time of the murder, and it is not material on this point.

The other, of the two remarkable facts which I have mentioned, is a most wholesome lesson as to the credibility of the testimony in this case, and of the value of circumstantial evidence. It is worth hours of argument, and peals of eloquence. It is a fact, a stubborn fact ; and there is no explaining it, nor getting away from it. Miss Lydia Kimball and Miss Sanborn, two elderly respectable females, as credible persons as any that have testified, have, under the influence of the madness that seems to have possessed almost every body in Salem, testified distinctly and positively to a thing as within their own knowledge, which is absolutely impossible. They both swore that on the morning after the murder, a person whom they did not know, brought into Capt. White's house an old cloak, and left it, saying, "*this is my brother's cloak.*" Miss Kimball can't say it was the prisoner who brought it, for neither of them knew him at that time, but Miss Sanborn thinks he had a cap on. And Miss Katherine Kimball says that Joseph Knapp afterwards took the cloak as his own. Now here seemed to be confirmation strong. Here was the prisoner, driven by the folly that always attends guilt, carrying into the very house of the murder the disguise he had worn the night before. How perfectly this corresponded with the testimony of Burns that Joseph Knapp left his cloak at the stable, and with the suggestion of the counsel that Frank Knapp had gone there to get it as a disguise ! How wonderful is the force of circumstantial evidence ! Men may lie, but circumstances cannot ! Now what is the fact about that cloak ? It was Joseph's cloak ; Stratton, Stephen White's coachman, went out to Wenham with a chaise that morning to bring in Mrs. Beckford, and she brought that cloak in with her. Stratton left Mrs. Beckford at Joseph White's, but by accident carried the cloak to Stephen White's in the chaise. And he afterwards folded it up and carried it to Joseph White's house. He was the stranger with the cap, that did *not* say, "*this is my brother's cloak,*"—for how could he say so ? he knew it was Joseph Knapp's cloak. Now what becomes of the truth of Miss Kimball's and Miss Sanborn's story, and of the force of circumstances ? "Circumstances cannot lie,"—but women, and men too, that swear to them, may be mistaken—and, with the help of a heated imagination, and a few leading suggestions, may honestly invent the most outrageous fictions. Now this was detected by mere accident. We questioned Lathrop about it—he did not know—but he said Stratton brought Mrs. Beckford in from Wenham. We called for Stratton—he was not to be found—his examination was postponed until the prosecutors had put in their additional testimony. We called for him again, and then the whole matter was distinctly admitted. And this is the way that evidence is got up against the prisoner. And how much more of equally plausible testimony might be explained away in like manner we shall never know. Not a single fact in the cause

is better vouched than this,—few so well; and yet the only material part of it is utterly false.

Now take Bray and Southwick, the only material witnesses; make what allowances for error you think ought to be made, and can you say you are satisfied that the prisoner was in Brown street?

There is one more piece of evidence that may apply to it; and that will bring me to an enquiry important for other reasons. I mean the testimony of Mr. Colman.

But let us first look for a few moments at the proof of the prisoner's alibi. It is applicable to two different times. The first between seven and ten, and the second after ten. The first depends on the testimony of Page, Balch, Burchmore and Forrester. Now Page says he knows it was Monday or Tuesday evening; he said on examination he knew it was not Saturday, because he came home from college that day, and spent the evening at home. Burchmore is positive it was on Tuesday; and though uncertain before, has since remembered that he told Wm. Pierce so the day or day but one after the murder. We offer Pierce as a witness to the fact. Balch and Forrester both strongly believe that it was on Tuesday, and all agree it was cloudy though light and Monday was fair and bright. Now what is there against this? It is said they have expressed doubts and uncertainty heretofore. This is no contradiction; three of them give now only their belief; but it is a very strong one in all—Burchmore however is positive, and he gives a good reason for it—and good proof of his correctness. Here stands William Pierce ready to swear that Burchmore told him so the next day or the day after; we cannot examine him, and the prosecutors will not. We have a right then to take it as proved by Pierce. But it is said that on the evening spoken of, Frank said he had a horse from Osborne's, and none is charged on that evening, and one is charged on Saturday evening; and this is thought sufficient to overthrow the whole testimony. But he may have had a horse and not be charged with it—or he may have told a falsehood when he said he had one. You remember the purpose for which he said he was going out of town; perhaps he chose to make a pretence of riding the better to conceal his motions; it all depends on the accuracy of Osborne's books; Osborne was not examined on that point. But after all it is of no importance, except to shew that Myrick and Webster are mistaken, and they are not very material witnesses.

The other branch of the alibi, is more important, because it embraces the supposed time of the murder. Capt. Knapp, the father, swears that he went home a few minutes before ten, and that Frank came in and went to bed a few minutes after. And there is a particularity about this account that marks it either as truth, or as wilful and cunning perjury; and Capt. Knapp's character is enough to shield him from such a charge. He says he commended Frank's return at the prescribed hour; that Frank asked him if he should bolt the door, and he said no, that Phippen was out; that Frank seeing him looking over his papers, (for he tailed the very night,) asked if he should help him—then threw his cap on the window seat near his own hat, and went up to bed—Capt. Knapp set up till after one, and Phippen Knapp returned at that hour, and sat up the rest of the night. Samuel H. Knapp's evidence is that a few minutes after ten, the prisoner opened his chamber door, spoke to him, and then went into his own room; and nobody heard him leave the house afterwards. He came down to breakfast as usual in the morning. Now this is impeached by testimony of certain conversations and statements of Capt. Knapp and Samuel H. Knapp. It is said Capt. Knapp told Shepard that Frank came home and went to bed before half past ten, "as Phippen told him,"—if he said, as I told Phippen, that would corroborate instead of contradicting him. And it is said farther that he told Treadwell that he did not know what time Frank came home, but believed about the usual hour. And that Samuel H. Knapp told Webb he did not know at what time Frank came home. Now these are not contradictions: and their

apparent inconsistency depends wholly on the accuracy with which these conversations are remembered and reported. Of all kinds of evidence reports of conversations are the most uncertain. You have seen in this very case, that neither counsel, nor the reporters, nor even the judges agree as to the words used by the witnesses on the last trial of this cause, only a week since—although the greatest attention was paid and careful notes were taken. Then what is the probability that accidental conversations which took place two or three months ago, can now be accurately stated? Which is most probable; that Capt. Knapp remembers the facts he states so circumstantially, or that Shepard and Treadwell remember his words? And he is confirmed by Phippen Knapp and Eliza Benjamin as far as they could know.

But there is one piece of evidence that meets all the deficiencies of this case with a wonderful felicity. Whatever the Government cannot otherwise prove, Mr. Colman swears the prisoner has confessed and nothing more. Of half an hour's conversation with the prisoner he cannot remember a word but what turns out to be indispensable to the case of the prosecution. I no more mean to accuse Mr. Colman of wilful mis-statement than I do Mr. Bray, or Miss Kimball, or Miss Sanborn. But he is ten times as likely to be mistaken as either of them. The old cloak story was, until exploded, ten times more credible than Mr. Colman's account of the confession—the witnesses for ought we know are equally respectable in character, and the testimony intrinsically more probable. What but the contagion of an unexampled popular phrenzy could have so deluded these women? They have not been more exposed to it than others. But Mr. Colman has been living in its focus and breathing its intoxicating air for months. No man in the community has been so much excited by this horrible event as Mr. Colman. No man has taken a more active part in enquiring into its mysteries. Shall he then claim an exemption from the power that has either prostrated the integrity or strangely confounded the memory of witnesses as credible as himself? He had visited Joseph's cell three times that very day before he went into Frank's, and at the last time, passed directly from one cell where he had received a full, verbal confession, to the other, where he now thinks he heard what he has testified. To a man, so excited as he was, and is to this day, here is ample cause for confusion and mistake. The witness is a clergyman, and whatever credibility that office may claim for him, I am willing he should enjoy. In my mind it is no more than belongs to any man of honest reputation; and on one account something less, for I cannot think the clerical office so well fits a man to endure and resist the excitement to which the witness has been subjected, as a secular employment. It is the experience of the world, that clergymen, when they mingle in worldly business, are more powerfully acted upon by it than others. Now every material word of his testimony is contradicted by Mr. N. P. Knapp, the prisoner's brother. He went into the cell with Mr. Colman, and must have heard all that was said: he had not been in Joseph's cell during any part of his confession, and was not therefore liable to any misunderstanding. His attention was early called to it by a dispute with Mr. Colman about the club, and by consultations with counsel for his brother's defence. He has always borne an unsuspected character. Mr. Colman himself testifies to the propriety of his conduct before the trial;—he trusted him with the knowledge of the place where the club was hidden, and depended on his honor not to remove this witness of his brother's guilt; and the trust was not betrayed. Now here stand two witnesses, equal in character, directly opposed to each other on a matter known only to themselves and to the prisoner.

It is said, Mr. Knapp is contradicted by Mr. Wheatland; that is, Mr. Wheatland swears that in casual conversations held some months ago, Mr. Knapp made statements to him contrary to what he now swears. I have already remarked on the value of this kind of evidence. It depends on

the thing least of all to be depended on: the accuracy with which words are remembered. The change of a word changes the whole meaning. Make the case your own. Can you pretend to remember casual conversation held with your neighbors three months ago, so that you can now swear to them? And if they should now swear to the facts differently from your present recollection of those conversations, would you charge them with perjury? Or do you think, if we had an investigating committee of twenty-seven, and the whole bar and population of Salem, looking up evidence for the prisoner, we could not find witnesses who have understood or misunderstood Mr. Colman to give accounts different from what he now swears to?—With such means any man may be contradicted. But Mr. Wheatland candidly tells you on this trial, that he cannot speak with certainty as to these conversations, how much related to what was said by Joseph, and how much to what was said by Frank. That once admitted, the whole force of the contradiction is gone.

Mr. Knapp cannot be mistaken about this matter. It is impossible that, after having employed counsel for the defence before the magistrate, and being busy in procuring counsel for the defence at the trial, and being himself a lawyer and understanding the danger of such evidence, he could have heard Frank confess away his life without remarking and remembering it. I say, confess away his life: for though even these confessions, if true, cannot harm him as principal, he was then chargeable as an accessory, and on such a charge they would have been fatal.

Mr. Colman on the contrary is most liable to be mistaken about it. Having had repeated conversations with Joseph, before and after, on the same subject, it would be wonderful if he could accurately report, as he undertakes to do, the very words of Frank. It would be wonderful if he could separate the substance of the interviews. Had not, as he says, expect to be called as a witness against Frank. Mr. Knapp did expect to be examined, because he had early intimation of Mr. Colman's mistake about the club. Now take the contradiction of Mr. Knapp, such as it is by Wheatland, on the one hand, and Mr. Colman's liability to error on the other; put equal characters into the two scales and which will preponderate? One must be wrong. It is unnecessary and would be wicked to charge either with perjury; but there is a mistake between them that no supposition can reconcile. If you are not already satisfied which was most liable to err, look at the intrinsic probabilities of the stories.

The prisoner is a young but not a timid man. You have seen enough of his bearing on this trial, to judge whether he would be likely to be surprised into a confession, and he was not surprised, for he had been examined and had counsel. Mr. Colman was a perfect stranger to him, not even known by sight. Now one of these witnesses tells you that the prisoner disclosed his whole guilt to a perfect stranger at first sight, without reluctance or hesitation, in direct answer to as many questions, and without threat, promise or encouragement, while the other says, he only said it was hard that Joseph should make any confessions about him, but that he had nothing to confess and should stand his trial. Which of these things is the more probable? And is it probable that N. P. Knapp, a lawyer, who was then providing for the defence of his brother, should have permitted him to make these confessions without interfering? I have said that Mr. Colman had confessions of the exact facts which the case required and no more. See how that is, and how probable it is. The prisoner makes no general confession; claims no right, and expresses no hope, to be admitted States' evidence. But to four distinct questions respecting the details of the murder, he gives four direct answers criminating himself. Now what were those answers? That the murder was committed between ten and eleven—a fact as you have seen wholly without other sufficient evidence, but all important to the case. That Richard Crowninshield was the actual murderer. A thing without the shadow of other proof, except that McGhie saw him the evening before.

near White's house, and looking away from it. That the club was hidden under a certain step of the Branch meeting house—the only proof that the club had any thing to do with the murder—and that the dirk was worked up at the factory—and lastly that Frank was absent from home at the time—to fortify the Brown street evidence and destroy the alibi. And there is one fact about this last which deserves notice: Mr. Colman in giving his reasons for asking these questions, said he had heard that the friends of the prisoner said he was at home that night at the time of the murder. This is strong confirmation of the alibi, for Mr. Colman had heard of it the second day after the arrest. But is it not remarkable that so little should be remembered of a half hour's conversation and that so very distinctly? Is it not remarkable, that finding Frank so communicative, Mr. Colman should not have gone on to verify Joseph's whole confession in the same way? He tells you he has Joseph's confession covering nine sheets of paper, and yet, though Frank answered so freely, he had the curiosity to ask him only these four questions. It is truly incredible.

Now what improbability is there in N. P. Knapp's account of this interview? Not the least. He agrees with Mr. Colman, that Frank said it was hard that Joseph should confess, and he cannot positively swear that what Mr. Colman adds as to its being done for Joseph's benefit, did not follow, because he remembers the first part of the sentence, and he may have forgotten the rest. But he swears that, to the best of his belief, it was not so. As to the four questions and answers, he swears positively that no such things were said; because, if said, he must have remembered them. And is not this a perfectly proper distinction? His account too of the conversation with Mr. Colman, on the turnpike and in Central street, of the note to Mr. Stephen White, and of all the other circumstances relating to the subject, is perfectly consistent, natural and credible.

But what is the amount of all these confessions? If true, they prove, indeed, that he knew too much of this guilty deed. But they imply no presence at it; all, but his own absence from home, are facts that he might, and some that he must have learned afterwards from others. And what does the fact that he was absent from home, prove? At most, it is but a circumstance corroborative of the Brown street evidence. He may have been there, or he may have been elsewhere. The form, indeed, in which we have the confession from Mr. Colman, might imply that he was absent, knowing of the deed. 'I went home afterwards;' but, obviously, this all depends on the exactness with which the words are remembered. Suppose only a slight change, and the dialogue to run thus: 'When was the murder committed?' 'Between 10 and 11.' 'Were you at home then?' 'No—I did not go home until after that time.' Now this would contradict the *alibi*, but would not contain any implication of his partaking in, or knowing of the murder at the time. And when an implication depends on such slight differences, it is no evidence at all. And I repeat, what is the probability, if any confessions were made, that they were made in the words now delivered, when Mr. Colman has forgotten both words and substance of all the rest of the conversation?

One point only remains; but it is the great and important one. Believe the Prisoner—if you will believe any thing on such testimony as Leighton's and Palmer's—a conspirator and a procurer of the murder—believe him in Brown-street at half past ten, and that the murder was committed at that hour, against the manifest weight of all the evidence but the confession. Believe the confession too, and the whole of it, improbable and contradicted as it is; and, whatever the Prisoner may deserve in your moral judgment, he stands as clear of this indictment as a principal, present, aiding and abetting, as Joseph Knapp does, who was in bed at Wenham. And here, gentlemen, if you ever come to this part of the case, you are to be tried as well as the prisoner. He is to be tried for his life, and you for a character which will last as long as life. The

time will soon come when this trial will be coolly and impartially examined. It is on record forever. The murmur of applause that will follow a verdict of guilty from the multitude that now surrounds you, will soon subside; and another and a more enduring voice will then inquire whether you have been faithful to the law, and to your oaths and consciences, or to the impatient cry of popular resentment. Remember one thing—the reasons for a conviction can never seem so strong to you as now, but if there are reasons for an acquittal on the law, they will gain strength in your minds every day of your life, though it may be too late to listen to them. Let us go back then to the acknowledged law of the case. No matter what the prisoner has done or agreed to do; if he was not at the moment when the murder was committed in a place where he could give actual immediate assistance, and there for that purpose. It has indeed been contended that it is enough that the parties thought the place a proper one, for the purpose—such is not the law, but here it is the same thing—for how can you judge that they thought it a fit place, unless you yourselves think it so. It is the only criterion in this dark affair, of which you see, as it were, only the dial hand, and know not how it is moved or regulated.

Could the man in Brown street give that help to the murderer, without the hope of which, the murder would not have been committed? This is a question of fact for you to try on the evidence and the view. You must be satisfied of this beyond any reasonable doubt, or your verdict of Guilty, will be against yourselves. Now, what assistance did the case admit. It was a secret assassination. If the prisoner had been actually present in the room or in the house, that alone would be enough. The mode of assistance would then be obvious. It would have been the part of the accomplice to beat down the strong old man, if he waked before the fatal blow; to murder any one of the inmates who should approach the chamber—give an alarm, or intercept the retreat. But when you find but one accomplice, and him at a distance in another street, you must enquire why he was there. You must be satisfied that he was posted there with some power, and therefore with the purpose, to aid. It becomes material to inquire particularly what aid he could afford. The late lamented Chief Justice, in his charge which has been read to you, delivered with special reference to the facts of this case, says, if he was there to prevent relief to the victim, to give an alarm to the murderer, or to assist him to escape, then he was present aiding and abetting. These are the only modes of assistance which occurred to him or which can be imagined by anybody. What other aid could the murderer have anticipated? of what other aid did the crime admit? Let us examine the place and the evidence with reference to these and see if either is possible. Was he there to intercept relief? If so, he would have taken a post where he could be aware of its approach. But did he so? It is said the murderer entered the house at half past ten. At that hour and for twenty minutes after, the prisoner is said to have been sitting wrapped in a cloak on the steps of the Ropewalk, not watching others but hiding his own head from observation. From that time until five minutes before he was joined by the murderer, he was still farther off, leaning on a post at Shepard's house. How could he know whether relief was approaching or not? He could not see the house from any one spot where he was seen that evening. Any one who passed him, would have to turn two corners before he would be near White's house. Now he could see nothing but Brown street and nobody but those who passed through it. If any one passed there, what was he to do? Was he to knock him down, upon the possibility that he might be going to turn into Newbury-street, and then might turn into Essex-street, and then might go up that street towards White's house? On such a possibility was he to protect the murderer by an act that would infallibly create alarm to no purpose? The supposition is absurd. He could not intercept relief, because he was not where he could



be aware of it. Could he give an alarm? An alarm of what? You see that he could not know of the approach of danger. If the enterprize had failed, Richard might have been discovered, overpowered and removed, before his accomplice could have been aware of any difficulty. But if it had been his object to intercept relief, or to give an alarm if he could not intercept it, where would he have been? At that point from which relief might be feared, and where early and certain intelligence of it might be had. Where was that? Certainly in Essex-street. Who would come to the relief? The inmates of Capt. White's own house or of the adjoining houses of Deland and Gardner, or of the opposite houses, or some casual passenger. Now, against all these, the post of observation was in Essex-street, and near the house. Or if he wanted to watch the adjoining streets, why not stand at the corner of Newbury-street? Why not any where but at the places where he was seen during the whole time?

But one thing remains. Could he in Brown-street help the murderer to escape? If he had been waiting with a swift horse, to convey him away, that might do. But one man on foot can no more help another to run away, than one can help another to keep a secret. One could only embarrass and expose the other. Was he then to defend him in his flight? Resistance was not to be depended on or expected; besides, the accomplice was unarmed, and of what avail would he have been in Brown-street, where no force could be expected, unless the alarm had become general. [Much of this argument consisted of reference to the plans and cannot be reported.] Now we call on the Prosecutors to satisfy you of some one mode in which aid could be afforded. On the former trial two ways only were suggested. First, that Richard might have gone into the garden early in the evening, and waited for a signal from Frank in Brown-street to indicate the time when the lights were extinguished in Capt. White's house. And second, that Frank was in Brown-street to see that the coast was clear in Howard-street, that Richard might go there to hide the club. Now these things, absurd as they seem, were really said and insisted on. And they are the best hypotheses that the best of counsel can make for the government. We want no better proof of the utter weakness of the point. If Richard was in the garden under the very windows, would he want Frank to tell him when the lights were put out? He could have watched every inmate of the house to his bed—he could have traced every light up the stairs until they were extinguished in the chambers.—He could have heard every noise, and know when it ceased in the sleep of those within. As to Frank's watching Howard-street, it would be enough to say that he was watched all the time, and that he did not once look down Howard-street. Frank had been standing from five to ten minutes at Bray's post where he could not see a foot into Howard-street, and then Richard having finished his conference, without any caution or examination started and ran into that street with the speed of a deer. Did this look like watching? And for what purpose was Howard street to be watched? That Richard might hide his club in a particular place selected—a club that nobody had ever seen and that could not be traced to him if found.

For what purpose then was the man in Brown-street? We are not bound to prove or to guess. But if it was the prisoner, and if the stories of the plot are true, he might have been there to know in season whether the enterprize had succeeded; its failure might have been most material to be known to the contrivers before inquiry had gone far. If plunder was expected he might have been there to share it. Neither of these things would make him a principal, for neither would be aiding at the time.

And now, Gentlemen, as the last question in this cause, you are to say on your consciences, are you satisfied beyond a reasonable doubt that the man in Brown-street, whoever he was, could have given any effectual aid in the actual commission of the murder, and selected that as the most

proper place for that purpose. If you doubt about that upon the whole evidence, do your duty, and acquit the Prisoner; such is the law, let it answer for its own deficiencies, if it be deficient, and trust that those who have the power will amend it, if it needs amendment.

Gentlemen of the Jury, these are the prisoner's last words; his counsel have done and said all that they have found to do and say in his behalf. The rest is for the government, the court, and for you. You are to be assailed with a powerful argument by the learned counsel who is to follow me. Admire the eloquence—admire the reasoning—but yield nothing to it but admiration, unless it convinces your understandings that the evidence you have heard, without regard to any thing said or written elsewhere, ought to satisfy you of the fact that the prisoner was where he could aid in this murder, and by such presence did aid in it.

The prisoner is very young to be placed at the bar for such a crime. But, young as he is, I ask no mercy for him beyond the law. For every favorable consideration and sympathy consistent with the law, I would urge upon you his youth, his afflicted family, and the seductions of the evil example of others. By these and all good motives, I would urge you not to sacrifice him against law, that those more guilty than himself may be reached through him. His life is in your hands and in the hands of each one of you, May you and each of you give no verdict and consent to none, but such as your hearts can approve now and forever.

After Mr. DEXTER had concluded his argument, Mr. WEBSTER addressed the Jury as follows:

I am little accustomed, Gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice, has it happened to me to be concerned, on the side of the Government, in any criminal prosecution whatever; and never, until the present occasion, in any case affecting life.

But I very much regret that it should have been thought necessary to suggest to you, that I am brought here to "hurry you against the law, and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure, that in this Court, nothing can be carried against the law, and that gentlemen, intelligent and just as you are, are not, by any power, to be hurried beyond the evidence. Though I could well have wished to shun this occasion, I have not felt at liberty to withhold my professional assistance, when it is supposed that I might be in some degree useful, in investigating and discussing the truth, respecting this most extraordinary murder. It has seemed to be a duty, incumbent on me, as on every other citizen, to do my best, and my utmost, to bring to light the perpetrators of this crime. Against the prisoner at the bar, as an individual, I cannot have the slightest prejudice. I would not do him the smallest injury or injustice. But I do not affect to be indifferent to the discovery, and the punishment of this deep guilt. I cheerfully share in the opprobrium, how much soever it may be, which is cast on those who feel and manifest an anxious concern that all who had a part in planning, or a hand in executing this deed of midnight assassination, may be brought to answer for their enormous crime, at the bar of public justice. Gentlemen, it is a most extraordinary case. In some respects, it has hardly a precedent any where; certainly none in our New England history. This bloody drama exhibited no suddenly excited ungovernable rage. The actors in it were not surprized by any lion-like temptation springing upon their virtue, and overcoming it, before resistance could begin. Nor did they do the deed to glut savage vengeance, or satiate long settled and deadly hate. It was a cool, calculating, money-making murder.—It was all "hire and salary, not revenge." It was the weighing of money against life; the counting out of so many pieces of silver, against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder, for mere pay.— Truly here is a new lesson for painters and poets. Whoever shall hereafter draw the portrait of murder, if he will show it as it has been exhibited in an example, where such example was last to have been looked for, in the very bosom of our New England society, let him not give it the grim visage of Moloch, the brow knitted by revenge, the face black with settled hate, and the blood-shot eye-emitting livid fires of malice. Let him draw, rather, a decorous, smooth faced, bloodless demon; a picture in *repose*, rather than in *action*; not so much an example of human nature, in its depravity, and in its paroxysms of *crime*, as an infernal nature, a fiend, in the ordinary display and developement of his character.

X The deed was executed with a degree of self possession and steadiness equal to the wickedness with which it was planned. The circumstances, new clearly in evidence, spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment.— With noiseless foot he paces the lonely hall, half lighted by the moon; he winds up the ascent of the stairs, and reaches the door of the chamber. Of this he moves the lock, by soft and continued pressure, till it turns on its hinges; and he enters, and beholds his victim before him. The room was uncommonly open to the admission of light. The face of the innocent sleeper was turned from the murderer, and the beams of the moon, resting on the grey locks of his aged temple, shewed him where to strike. The fatal blow is given! and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work, and he yet plies the dagger, though it was obvious that life had been destroyed by the blow of the bludgeon.— He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poignard! To finish the picture, he explores the wrist for the pulse! he feels it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it, as he came in, and escapes. He has done the murder—no eye has seen him, no ear has heard him. The *secret* is his own, and it is safe!

Ah! Gentlemen, that was a dreadful mistake. Such a secret can be safe no-where. The whole creation of God has neither nook nor corner, where the guilty can bestow it, and say it is safe. Not to speak of that eye which glances through all disguises, and beholds every thing, as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that "murder will out." True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of heaven, by shedding man's blood, seldom succeed in avoiding discovery. Especially, in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, every thing, every circumstance, connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery. Meantime the guilty soul cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment which it does not acknowledge to God nor man. A culture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirits of which we read, it overcomes him, and leads him

whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions, from without, begin to embarrass him, and the net of circumstance to entangle him, the fatal *secret* struggles with still greater violence to burst forth. It must be confessed, *it will be* confessed, there is no refuge from confession but suicide, and suicide is confession.

Much has been said, on this occasion, of the excitement which has existed, and still exists, and of the extraordinary measures taken to discover and punish the guilty. No doubt there has been, and is, much excitement, and strange indeed were it, had it been otherwise. Should not all the peaceable and well disposed naturally feel concerned, and naturally exert themselves to bring to punishment the authors of this secret assassination? Was it a thing to be slept upon or forgotten? Did you, gentlemen, sleep quite as quietly in your beds after this murder as before? Was it not a case for rewards, for meetings, for committees, for the united efforts of all the good, to find out a band of murderous conspirators, of midnight ruffians, and to bring them to the bar of justice and law? If this be excitement, is it an unnatural, or an improper excitement?

It seems to me, gentlemen, that there are appearances of another feeling of a very different nature and character, not very extensive I would hope, but still there is too much evidence of its existence. Such is human nature, that some persons lose their abhorrence of crime, in their admiration of its magnificent exhibitions. Ordinary vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime, seize on the imagination, and lead them to forget the depths of the guilt, in admiration of the excellence of the performance, or the unequalled atrocity of the purpose. There are those in our day, who have made great use of this infirmity of our nature; and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive, sometimes by the polish of its manners, and sometimes by its very extravagance; and study to show off crime under all the advantages of cleverness and dexterity. Gentlemen, this is an extraordinary murder—but it is still a murder. We are not to lose ourselves in wonder at its origin, or in gazing on its cool and skilful execution. We are to detect and to punish it; and while we proceed with caution against the prisoner, and are to be sure that we do not visit on his head the offences of others, we are yet to consider that we are dealing with a case of most atrocious crime, which has not the slightest circumstance about it to soften its enormity. It is murder, deliberate, concerted, malicious murder.

Although the interest in this case may have diminished by the repeated investigation of the facts; still, the additional labor which it imposes upon all concerned is not to be regretted, if it should result in removing all doubts of the guilt of the prisoner.

The learned counsel for the prisoner has said, truly, that it is your individual duty to judge the prisoner,—that it is your individual duty to determine his guilt or innocence—and that you are to weigh the testimony with candour and fairness. But much at the same time has been said, which, although it would seem to have no distinct bearing on the trial, cannot be passed over without some notice.

A tone of complaint so peculiar has been indulged, as would almost lead us to doubt whether the prisoner at the bar, or the managers of this prosecution, are now on trial. Great pains have been taken to complain of the *manner* of the prosecution. We hear of getting up a case;—of setting in motion trains of machinery;—of foul testimony; of combina-

tions to overwhelm the prisoner;—of private prosecutors;—that the prisoner is hunted, persecuted, driven to his trial;—that every body is against him;—and various other complaints, as if those who would bring to punishment the authors of this murder were almost as bad as they who committed it.

In the course of my whole life, I have never heard before, so much said about the particular counsel who happen to be employed. As if it were extraordinary, that other counsel than the usual officers of the Government should be assisting in the conducting of a case on the part of the Government. In one of the last capital trials in this county, that of Jackman for the Goodridge robbery, (so called,) I remember that the learned head of the Suffolk Bar, Mr. Prescott, came down in aid of the officers of the Government. This was regarded as neither strange nor improper. The counsel for the prisoner, in that case, contented themselves with answering his arguments, as far as they were able, instead of carping at his presence.

Complaint is made that Rewards were offered, in this case, and temptations held out to obtain testimony. Are not rewards always offered, when great and secret offences are committed? Rewards were offered in the case to which I alluded; and every other means taken to discover the offenders that ingenuity, or the most persevering vigilance could suggest. The learned counsel have suffered their zeal to lead them into a strain of complaint, at the manner in which the perpetrators of this crime were detected, almost indicating that they regard it as a positive injury, to them, to have found out their guilt. Since no man witnessed it, since they do not now confess it, attempts to discover it are half esteemed as officious intermeddling and impertinent inquiry.

It is said, that here even a Committee of Vigilance was appointed. This is a subject of reiterated remark. This Committee are pointed at, as though they had been officiously intermeddling with the administration of Justice. They are said to have been "laboring for months" against the prisoner. Gentlemen, what must we do in such a case? Are people to be dumb and still, through fear of overdoing? Is it come to this, that an effort cannot be made, a hand cannot be lifted to discover the guilty, without its being said, there is a combination to overwhelm innocence? Has the community lost all moral sense? Certainly a community that would not be roused to action, upon an occasion such as this was, a community which should not deny sleep to their eyes, and slumber to their eyelids, till they had exhausted all the means of discovery and detection, must, indeed, be lost to all moral sense, and would scarcely deserve protection from the laws. The learned counsel have endeavoured to persuade you, that there exists a prejudice against the persons accused of this murder. They would have you understand that it is not confined to this vicinity alone;—but that even the Legislature have caught this spirit. That through the procurement of the gentleman, here styled private prosecutor, who is a member of the Senate, a special session of this Court was appointed for the trial of these offenders. That the ordinary movements of the wheels of Justice were too slow for the purposes devised.—But does not every body see and know that it was matter of absolute necessity to have a special session of the Court? When, or how could the prisoners have been tried without a special session? In the ordinary arrangement of the Courts, but one week, in a year, is allotted for the whole Court to sit in this County. In the trial of all capital offences a majority of the Court, at least, are required to be present. In the trial of the present case alone, three weeks have already been taken up. Without such special session, then, three years would not have been sufficient for the purpose. It is answer sufficient to all complaints on this subject, to say, that the law was drawn by the late Chief Justice himself, to enable the Court to accomplish its duties; and to afford the persons accused an opportunity for trial without delay.

Again, it is said, that it was not thought of making Francis Knapp, the prisoner at the bar, a PRINCIPAL till after the death of Richard Crowninshield, jun.; that the present indictment is an afterthought—that “testimony was got up” for the occasion. It is not so. There is no authority for this suggestion. The case of the Knapps had not then been before the Grand Jury. The officers of the Government did not know what the testimony would be against them. They could not therefore have determined what course they should pursue. They intended to arraign all as principals, who should appear to have been principals; and all as accessories, who should appear to have been accessories. All this could be known only when the evidence should be produced.

But the learned counsel for the defendant take a somewhat loftier flight still. They are more concerned, they assure us, for the law itself, than even for their client. Your decision, in this case, they say, will stand as a precedent. Gentleman, we hope it will. We hope it will be a precedent, both of candor and intelligence, of fairness and of firmness; a precedent of good sense and honest purpose, pursuing their investigation discreetly, rejecting loose generalities, exploring all the circumstances, weighing each, in search of truth, and embracing and declaring the truth, when found.

It is said, that “laws are made, not for the punishment of the guilty, but for the protection of the innocent.” This is not quite accurate perhaps, but if so, we hope they be so administered as to give that protection. But who are the innocent, whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who having lived in the fear of God, through the day, wish to sleep in his peace through the night, in their own beds. The law is established, that those who live quietly, may sleep quietly; that they who do no harm, may feel none. The gentleman can think of none that are innocent, except the prisoner at the Bar, not yet convicted. Is a proved conspirator to murder, innocent? Are the Crowninshields and the Knapps, innocent? What is innocence? How deep stained with blood,—how reckless in crime,—how deep in depravity, may it be, and yet remain innocence? The law is made, if we would speak with entire accuracy, to protect the innocent, by punishing the guilty. But there are those innocent, out of Court as well as in;—innocent citizens not suspected of crime, as well as innocent prisoners at the bar.

The criminal law is not founded in a principle of vengeance. It does not punish, that it may inflict suffering. The humanity of the law feels and regrets, every pain it causes, every hour of restraint it imposes, and more deeply still, every life it forfeits. But it uses evil, as the means of preventing greater evil. It seeks to deter from crime, by the example of punishment. This is its true, and only true main object. It restrains the liberty of the few offenders, that the many who do not offend, may enjoy their own liberty. It forfeits the life of the murderer, that other murders may not be committed. The law might open the jails, and at once set free all persons accused of offences, and it ought to do so, if it could be made certain that no other offences would hereafter be committed. Because, it punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished, the law has, so far, failed of its purpose; the safety of the innocent is, so far, endangered. Every unpunished murder takes away something from the security of every man's life. And whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent.

We wish nothing to be strained against this defendant. Why then all this alarm? Why all this complaint against the manner in which the crime is discovered? The prisoner's counsel catch at supposed flaws of evidence, or bad character of witnesses, without meeting the case. Do they mean to deny the conspiracy? Do they mean to deny that the two

Crowninshields and the two Knapps were conspirators? Why do they rail against Palmer, while they do not disprove, and hardly dispute the truth of any one fact sworn to by him? Instead of this, it is made matter of sentimentality, that Palmer has been prevailed upon to betray his bosom companions, and to violate the sanctity of friendship; again, I ask, why do they not meet the case? If the fact is out, why not meet it? Do they mean to deny that Capt. White is dead? One should have almost supposed even that from some remarks that have been made. Do they mean to deny the conspiracy? Or, admitting a conspiracy, do they mean to deny only, that Frank Knapp, the prisoner at the bar, was abetting in the murder, being present, and so deny that he was a principal? If a conspiracy is proved, it bears closely upon every subsequent subject of inquiry. Why dent they come to the fact? Here the defence is wholly indistinct. The counsel neither take the ground, nor abandon it. They neither fly, nor light. They hover. But they must come to a closer mode of contest. They must meet the facts, and either deny or admit them. Had the prisoner at the bar, then, a knowledge of this conspiracy or not? This is the question. Instead of laying out their strength in complaining of the *manner* in which the deed is discovered,—of the extraordinary pains taken to bring the prisoner's guilt to light;—would it not be better to show there was no guilt? Would it not be better to show that he had committed no crime? They say, and they complain, that the community feel a great desire that he should be punished for his crimes;—would it not be better to convince you that he has committed no crime?

Gentlemen, let us now come to the case. Your first inquiry, on the evidence, will be,—Was Capt. White murdered in pursuance of a conspiracy, and was the defendant one of this conspiracy? If so, the second inquiry is, was he so connected with the murder itself as that he is liable to be convicted as a *principal*? The defendant is indicted as a *principal*. If not guilty *as such*, you cannot convict him. The indictment contains three distinct classes of counts. In the *first*, he is charged as having done the deed, with his own hand;—in the *second*, as an aider and abettor to Richard Crowninshield jr. who did the deed;—in the *third*, as an aider and abettor to some person unknown. If you believe him guilty on either of these counts, or in either of these ways, you must convict him.

It may be proper to say, a preliminary remark, that there are two remarkable circumstances attending this trial. One is, that Richard Crowninshield jr. the supposed immediate *perpetrator* of the murder, since his arrest, has committed suicide. He has gone to answer before a tribunal of perfect infallibility. The other is, that Joseph Knapp, the supposed origin and planner of the murder, having once made a full disclosure of the facts, under a promise of indemnity, is, nevertheless, not now a witness. Notwithstanding his disclosure, and his promise of indemnity, he now refuses to testify. He chooses to return to his original state, and now stands answerable himself, when the time shall come for his trial. These circumstances it is fit you should remember, in your investigation of the case.

Your decision may affect more than the life of this defendant. If he be not convicted as principal, no one can be. Nor can any one be convicted of a participation in the crime as accessory. The Knapps and George Crowninshield will be again on the community. This shows the importance of the duty you have to perform;—and to remind you of the degree of care and wisdom, necessary to be exercised in its performance. But certainly these considerations do not render the prisoner's guilt any clearer, nor enhance the weight of the evidence against him. No one desires you to regard consequences in that light. No one wishes any thing to be strained, or too far pressed against the prisoner. Still, it is fit you should see the full importance of the duty devolved upon you. And now, Gentlemen, in examining this evidence, let us begin at the be-

ginning, and see first what we know independent of the disputed testimony. This is a case of circumstantial evidence. And these circumstances, we think, are full and satisfactory. The case mainly depends upon them, and it is common, that offences of this kind, must be proved in this way. Midnight assassins take no witnesses. The evidence of the *facts* relied on has been, somewhat sneeringly denominated by the learned counsel, "*circumstantial stuff*," but, it is not such *stuff* as dreams are made of. Why does he not rend this *stuff*? Why does he not tear it away, with the crush of his hand. He dismisses it, a little too summarily. It shall be my business to examine this *stuff* and try its cohesion.

The letter from Palmer at Belfast, is that no more than flimsy *stuff*?

The fabricated letters, from Knapp to the Committee, and Mr. White, are they nothing but *stuff*?

The circumstance, that the house keeper was away at the time the murder was committed, as it was agreed she would be, is that too, a useless piece of the same *stuff*?

The facts, that the key of the chamber door was taken out and secreted; that the window was unbarred and unbolted; are these to be so slightly and so easily disposed of?

It is necessary, Gentlemen, now to settle, at the commencement the great question of a *conspiracy*. If there was none, or the defendant was not a party, then there is no evidence here to convict him. If there was a conspiracy and he is proved to have been a party, then these two facts have a strong bearing on others and all the great points of inquiry. The defendant's counsel take no distinct ground, as I have already said, on this point, neither to admit, nor to deny. They choose to confine themselves to a hypothetical mode of speech. They say, supposing there was a conspiracy, *non sequitur*, that the prisoner is guilty, as *principal*. Be it so. But still, if there was a conspiracy, and if he was a conspirator, and helped to plan the murder, this may shed much light on the evidence, which goes to charge him with the execution of that plan.

We mean to make out the conspiracy; and that the defendant was a party to it; and then to draw all just inferences from these facts.

Let me ask your attention, then, in the first place, to those appearances, on the morning after the murder, which have a tendency to show, that it was done in pursuance of a preconcerted plan of operation. What are they? A man was found murdered in his bed.—No stranger had done the deed—no one unacquainted with the house had done it.—It was apparent, that somebody from within had opened, and somebody from without had entered.—There had been there, obviously and certainly, concert and co-operation. The inmates of the house were not alarmed when the murder was perpetrated. The assassin had entered, without any riot, or any violence. He had found the way prepared before him. The house had been opened. The window was unbarred, from within, and its fastening unscrewed. There was a lock on the door of the chamber, in which Mr. White slept, but the key was gone. It had been taken away, and secreted. The footsteps of the murderer were visible, out doors, tending toward the window. The plank by which he entered the window, still remained. The road he pursued had been thus prepared for him. The victim was slain, and the murderer had escaped. Every thing indicated that somebody from *within* had co-operated with somebody from *without*. Every thing proclaimed that some of the inmates, or somebody having access to the house, had had a hand in the murder. On the face of the circumstances, it was apparent, therefore, that this was a premeditated, concerted, conspired murder. Who then were the conspirators? If not now found out, we are still groping in the dark, and the whole tragedy is still a mystery.

If the Knapps and the Crowninshields were not the conspirators, in this murder, then there is a whole set of conspirators yet not discovered.



Because, independent of the testimony of Palmer and Leighton, independent of all disputed evidence, we know, from uncontroverted facts, that this murder was, and must have been, the result of concert and co-operation, between two or more. We know it was not done, without plan and deliberation; we see, that whoever entered the house, to strike the blow, was favored and aided by some one, who had been previously in the house, without suspicion, and who had prepared the way. This is concert, this is co-operation, this is conspiracy. If the Knapps and the Crowninshields, then, were not the conspirators, who were? Joseph Knapp had a motive to desire the death of Mr. White, and that motive has been shown.

He was connected by marriage in the family of Mr. White. His wife was the daughter of Mrs. Beckford, who was the only child of a sister of the deceased. The deceased was more than eighty years old, and he had no children.—His only heirs were nephews and neices.—He was expected to be possessed of a very large fortune,—which would have descended, by law, to his several nephews and nieces in equal shares, or, if there was a will, then according to the will. But as Capt. White had but two branches of heirs—the children of his brother Henry White, and of Mrs. Beckford—according to the common idea each of these branches would have shared one half of Mr. White's property.

This popular idea is not legally correct. But it is common, and very probably was entertained by the parties. According to this, Mrs. Beckford, on Mr. White's death, without a will, would have been entitled to one half of Mr. White's ample fortune; and Joseph Knapp had married one of her three children. There was a will, and this will gave the bulk of the property to others; and we learn from Palmer that one part of the design was to destroy the will before the murder was committed. There had been a previous will, and that previous will was known or believed to have been more favorable than the other, to the Beckford family. So that by destroying the last will, and destroying the life of the testator at the same time, either the first and more favorable will would be set up, or the deceased would have no will, which would be, as was supposed, still more favorable. But the conspirators not having succeeded in obtaining and destroying the last will, though they accomplished murder, but the last will being found in existence and safe, and that will bequeathing the mass of the property to others, it seemed, at the time, impossible for Joseph Knapp, as for any one else, indeed, but the principal devisee, to have any motive which should lead to the murder. The key, which unlocks the whole mystery, is the knowledge of the intention of the conspirators, to steal the will. This is derived from Palmer, and it explains all. It solves the whole marvel. It shows the motive actuating those, against whom there is much evidence, but who, without the knowledge of this intention, were not seen to have had a motive. This intention is proved, as I have said, by Palmer; and it is so congruous with all the rest of the case, it agrees so well with all facts and circumstances, that no man could well withhold his belief, though the facts were stated by a still less credible witness. If one, desirous of opening a lock, turns over and tries a bunch of keys till he finds one that will open it, he naturally supposes he has found the key of that lock. So in explaining circumstances of evidence, which are apparently irreconcilable, or unaccountable, if a fact be suggested, which at once accounts for all, and reconciles all, by whomsoever it may be stated, it is still difficult not to believe that such fact is the true fact belonging to the case. In this respect, Palmer's testimony is singularly confirmed. If he were false, then his ingenuity could not furnish us such clear exposition of strange-appearing circumstances. Some truth, not before known, can alone do that.

When we look back, then, to the state of things immediately on the discovery of the murder, we see that suspicion would naturally turn at once, not to the heirs at law, but to those principally benefited by the

will. They, and they alone, would be supposed or seem to have a direct object, for wishing Mr. White's life to be terminated. And strange as it may seem, we find counsel now insisting, that if no apology, it is yet mitigation of the atrocity of the Knapps conduct, in attempting to charge this foul murder on Mr. White, the nephew and principal devisee, that public suspicion was already so directed! As if assassination of character were excusable, in proportion as circumstances may render it easy. Their endeavors, when they knew they were suspected themselves, to fix the charge on others by foul means and by falsehood, is fair and strong proof of their own guilt. But more of that, hereafter.

The counsel say that they might safely admit, that Richard Crowninshield jr. was the perpetrator of this murder.

But how could they safely admit that? If that were admitted, every thing else would follow. For why should Richard Crowninshield jr. kill Mr. White? He was not his heir, nor his devisee; nor was he his enemy. What could be his motive? If Richard Crowninshield jr. killed Mr. White, he did it, at some one's procurement who himself had a motive? And who, having any motive, is shown to have had any intercourse with Richard Crowninshield jr. but Joseph Knapp, and this, principally through the agency of the Prisoner at the Bar?—It is the infirmity, the distressing difficulty of the Prisoner's case, that his counsel cannot and dare not admit what they yet cannot disprove and what all must believe. He who believes, on this evidence, that Richard Crowninshield jr. was the immediate murderer, cannot doubt that both the Knapps were conspirators in that murder. The counsel, therefore, are wrong, I think, in saying they might safely admit this. The admission of so important, and so connected, a fact, would render it impossible to contend further against the proof of the entire conspiracy, as we state it.

What, then, was this conspiracy? J. J. Knapp jr. desirous of destroying the will, and of taking the life of the deceased, hired a ruffian, who with the aid of other ruffians, were to enter the house, and murder him, in his own bed.

As far back as January, this conspiracy began. Endicott testifies to a conversation with J. J. Knapp, at that time in which Knapp told him that Capt. White had made a will, and given the principal part of his property to Stephen White. When asked how he knew, he said "black and white dont lie."—When asked, if the will was not locked up, he said "there is such a thing as two keys to the same lock." And speaking of the then late illness of Capt. W. he said, that Stephen White would not have been sent for, if he had been there.

Hence it appears, that as early as January, Knapp had a knowledge of the will, and that he had access to it, by means of false keys.—This knowledge of the will, and an intent to destroy it, appear also from Palmer's testimony—a fact disclosed to him by the other conspirators. He says, that he was informed of this by the Crowninshields on the 2d of April. But, then, it is said that Palmer is not to be credited—that by his own confession he is a felon,—that he has been in the State Prison in Maine,—and above all, that he was an inmate and associate with these conspirators themselves.—Let us admit these facts.—Let us admit him to be as bad as they would represent him to be; still in law, he is a competent witness. How else are the secret designs of the wicked to be proved but by their wicked companions, to whom they have disclosed them? The Government, does not select its witnesses. The conspirators themselves have chosen Palmer. He was the confidant, of the prisoners. The fact however does not depend on his testimony alone.—It is corroborated by other proof, and taken in connection with the other circumstances, it has strong probability. In regard to the testimony of Palmer, generally,—it may be said, that it is less contradicted, in all parts of it, either by himself or others, than that of any other material witness, and that every thing he has told, has

been corroborated by other evidence, so far as it was susceptible of confirmation. An attempt has been made to impair his testimony, as to his being at the half way house, on the night of the murder ;—you have seen with what success. Mr. Babb is called to contradict him—you have seen how little he knows—and even that not certainly ;—for he, himself, is proved to have been in an error, by supposing him to have been at the half way house on the evening of the 9th of April. At that time Palmer is proved to have been at Dustin's in Danvers. If, then, Palmer, bad as he is, has disclosed the secrets of the conspiracy, and has told the truth—there is no reason why it should not be believed. Truth is truth, come whence it may ;—though it were even from the bottom, of the bottomless pit.

The facts show that this murder had been long in agitation—that it was not a new proposition on the 2d of April—that it had been contemplated for five or six weeks before. R. Crowninshield was at Wenham in the latter part of March, as testified by Starrett. F. Knapp was at Danvers, in the latter part of February, as testified by Allen. R. Crowninshield inquired whether Capt. Knapp was about home, when at Wenham. The probability is, that they would open the case to Palmer, as a new project. There are other circumstances that show it to have been some weeks in agitation. Palmer's testimony as to the transactions on the 2d of April, is corroborated by Allen, and by Osborn's books. He says that F. Knapp came there in the afternoon—and again in the evening. So the book shows. He says that Capt. White had gone out to his farm on that day. So others prove. How could this fact, or these facts, have been known to Palmer, unless F. Knapp had brought the knowledge? and was it not the special object of this visit, to give information of this fact, that they might meet him and execute their purpose on his return from his farm? The letter of Palmer, written at Belfast, has intrinsic evidence of genuineness. It was mailed at Belfast, May 13th. It states facts that he could not have known, unless his testimony be true. This letter was not an afterthought ; it is a genuine narrative. In fact, it says, " I know the business your Brother Frank was transacting on the 2d of April"—how could he have possibly known this, unless he had been there?—The "\$1000, that was to be paid ;" where could he have obtained this knowledge? The testimony of Endicott, of Palmer, and these facts are to be taken together ; and they, most clearly, show that the death of Capt. White must have been caused by *somebody interested* in putting an end to his life.

As to the testimony of Leighton. As far as manner of testifying goes, he is a bad witness :—but it does not follow from this that he is not to be believed. There are some strange things about him. It is strange, that he should make up a story against Capt. Knapp, the person with whom he lived ;—that he never voluntarily told any thing ;—all that he has said is screwed out of him. The story could not have been invented by him ;—his character for truth is unimpeached—and he intimated to another witness, soon after the murder happened, that he knew something he should not tell. There is not the least contradiction in his testimony,—though he gives a poor account of withholding it. He says that he was extremely *bothered* by those who questioned him. In the main story that he relates, he is universally consistent with himself ;—Some things are for him—and some against him. Examine the intrinsic probability of what he says. See if some allowance is not to be made for him, on account of his ignorance, with things of this kind. It is said to be extraordinary, that he should have heard just so much of the conversation and no more ;—that he should have heard just what was necessary to be proved, and nothing else. Admit that this is extraordinary ;—still, this does not prove it not true. It is extraordinary, that you twelve gentlemen should be called upon out of all the men in the county, to decide this case ;—no one could have foretold this, three weeks since. It is extraor-

dinary, that the first clue to this conspiracy, should have been derived from information given by the Father of the prisoner at the bar ;—and in every case that comes to trial there are many things extraordinary—the murder itself in this case is an extraordinary one—but still we do not doubt its reality.

It is argued, that this conversation between Joseph and Frank, could not have been, as Leighton has testified, because they had been together for several hours before,—this subject must have been uppermost in their minds,—whereas this appears to have been the commencement of their conversation upon it. Now, this depends altogether upon the tone and manner of the expression ;—upon the particular word in the sentence, which was emphatically spoken—If he had said “when did you see Dick, Frank ?”—this would not seem to be the beginning of the conversation. With what emphasis it was uttered, it is not possible to learn ; and therefore nothing can be made of this argument. If this boy’s testimony stood alone,—it should be received with caution. And the same may be said of the testimony of Palmer. But they do not stand alone. They furnish a clue to numerous other circumstances, which, when known, react in corroborating what would have been received with caution, until thus corroborated. How could Leighton have made up this conversation ? “When did you see Dick ?” “I saw him this morning.” “When is he going to kill the old man.” “I don’t know.” “Tell him if he don’t do it soon, I won’t pay him.” Here is a vast amount, in few words. Had he wit enough to invent this ? There is nothing so powerful as truth ; and often nothing so strange. It is not even suggested that the story was made for him. There is nothing so extraordinary in the whole matter, as it would have been for this country boy to have invented this story.

The acts of the parties themselves, furnish strong presumption of their guilt. What was done on the receipt of the letter from Maine ? This letter was signed by *Charles Grant, jr.* a person not known to either of the Knapps,—nor was it known to them, that any other person, beside the Crowninshields, knew of the conspiracy. This letter by the accidental omission of the word *jr.* fell into the hands of the father, when intended for the son. The father carried it to Wenham where both the sons were. They both read it. Fix your eye steadily, on this part of the *circumstantial stuff*, which is in the case ; and see what can be made of it. This was shewn to the two brothers on Saturday, 15th of May. They, neither of them, knew Palmer. And if they had known him, they could not have known him to have been the writer of this letter. It was mysterious to them, how any one, at Belfast, could have had knowledge of this affair. Their conscious guilt prevented due circumspection.—They did not see the bearing of its publication.—They advised their father to carry it to the Committee of Vigilance, and it was so carried. On Sunday following, Joseph began to think there might be something in it. Perhaps, in the mean time, he had seen one of the Crowninshields. He was apprehensive, that they might be suspected,—he was anxious to turn attention from their family.—What course did he adopt to effect this ? He addressed one letter, with a false name, to Mr. White, and another to the Committee ;—and to complete the climax of his folly, he signed the letter addressed to the Committee, “*Grant*”—the same name as that signed to the letter they then had from Belfast, addressed to Knapp.—It was in the knowledge of the Committee, that no person but the Knapps had seen this letter from Belfast ;—and that no other person knew its signature.—It therefore must have been irresistibly plain, to them, that one of the Knapps must have been the writer of the letter they had received, charging the murder on Mr. White. Add to this, the fact of its having been dated at *Lynn*, and mailed at Salem, four days after it was dated, and who could doubt respecting it ? Have you ever read, or known, of folly equal to this ? Can you conceive of crime more

odious and abominable? Merely to explain the apparent mysteries of the letter from Palmer, they excite the basest suspicions of a man, who, if they were innocent, they had no reason to believe guilty; and who, if they were guilty, they most certainly knew to be innocent. Could they have adopted a more direct method of exposing their own infamy? The letter to the Committee has intrinsic marks of a knowledge of this transaction. It tells of the *time*, and the *manner* in which the murder was committed. Every line speaks the writer's condemnation. In attempting to divert attention from his family, and to charge the guilt upon another, he indelibly fixes it upon himself.

Joseph Knapp requested Allen to put these letters into the Post-Office, because said he, "I wish to nip this silly affair in the bud." If this were not the order of an overruling Providence, I should say that it was the silliest peice of folly that was ever practised. Mark the destiny of Crime. It is ever obliged to resort to such subterfuges; it trembles in the broad light; it betrays itself, in seeking concealment. He alone walks safely, who walks uprightly. Who, for a moment, can read these letters and doubt of J. Knapp's guilt? The constitution of nature is made to inform against him. There is no corner dark enough to conceal him. There is no turnpike broad enough, or smooth enough, for a man so guilty to walk in without stumbling. Every step proclaims his secret to every passenger. His own acts come out, to fix his guilt. In attempting to charge another with his *own crime*, he writes his *own confession*. To do away the effect of Palmer's letter, signed *Grant*—he writes his own letter and affixes to it the name of *Grant*. He writes in a disguised hand; but how could it happen, that the same *Grant* should be in Salem, that was at Belfast? This has brought the whole thing out. Evidently he did it, because he has adopted the same style—Evidently, he did it,—because he speaks of the price of blood, and of other circumstances connected with the murder, that no one but a conspirator could have known.

Palmer says he made a visit to the Crowninshields, on the 9th of April. George then asked him whether he had heard of the *murder*. Richard inquired, whether he had heard the *music at Salem*. They said that *they were suspected*, that a Committee had been appointed to search houses—and that they had melted up the dagger, the day after the murder, because it would a suspicious circumstance to have it found in their possession. Now this Committee was not appointed, in fact, until Friday Evening.—But this proves nothing against Palmer—it does not prove that George *did not tell him so*—it only proves that he gave a false reason, for a fact. They had heard that they were suspected—how could they have heard this, unless it were from the whisperings of their own consciences?—surely this rumor was not thus public.

About the 27th of April, another attempt is made by the Knapps to give a direction to public suspicion. They reported themselves to have been *robbed*, in passing from Salem to Wenham, near Wenham pond. They came to Salem, and stated the particulars of the adventure—They described persons, their dress, size, and appearance, *who had been suspected* of the murder. They would have it understood, that the community was infested with a band of Ruffians, and that *they*, themselves, were the particular objects of their vengeance. Now, this turns out to be all fictitious,—all false. Can you conceive of any thing more enormous—any wickedness greater, than the circulation of such reports?—than the allegation of crimes, if committed, capital?—if no such thing—thus it reacts, with double force upon themselves, and goes very far to show their guilt. How did they conduct on this occasion? did they make hue and cry?—did they give information that they had been assaulted, that night at Wenham? No such thing. They rested quietly on that night—they waited to be called on for the particulars of their adventure—they made no attempt to arrest the offenders—this was not their object. They were content to fill the thousand mouths of rumour,—to spread abroad false re-

ports,—to divert the attention of the public from themselves—for they thought every man suspected them, because they knew they ought to be suspected.

The manner in which the compensation for this murder was paid, is a circumstance worthy of consideration. By examining the facts and dates, it will satisfactorily appear, that Joseph Knapp paid a sum of money to Richard Crowninshield in five franc pieces on the 24th of April. On the 21st of April, Joseph Knapp received five hundred five franc pieces, as the proceeds of an adventure at sea. The remainder of this species of currency that came home in the vessel was deposited in a Bank at Salem. On Saturday 24th of April, Frank and Richard rode to Wenham—They were there with Joseph an hour or more—Appeared to be negotiating private business—Richard continued in the chaise—Joseph came to the chaise and conversed with him. These facts are proved by Hart, and Leighton, and by Osborn's books. On Saturday evening, about this time, Richard Crowninshield is proved to have been at Wenham, with another person, whose appearance corresponds with Frank, by Lummus. Can any one doubt this being the same evening? What had Richard Crowninshield to do at Wenham, with Joseph, unless it were this business? He was there before the murder—he was there after the murder—he was there clandestinely, unwilling to be seen.—If it were not upon this business,—let it be told what it was for—Joseph Knapp could explain it—Frank Knapp might explain it—But they don't explain it—and the inference is against them.

Immediately after this, Richard passes five franc pieces—on the same evening, one to Lummus—five to Palmer—and near this time George passes three or four in Salem—Here are nine of these pieces passed by them in four days—this is extraordinary.—It is an unusual currency—in ordinary business, few men would pass nine such pieces in the course of a year. If they were not received in this way, why not explain how they came by them? Money was not so flush in their pockets, that they could not tell whence it came, if it honestly came there. It is extremely important to them to explain whence this money came, and they would do it if they could. If, then, the price of blood was paid at this time, in the presence and with the knowledge of this defendant; does not this prove him to have been connected with this conspiracy?

Observe, also, the effect on the mind of Richard, of Palmer's being arrested, and committed to prison,—the various efforts he makes to discover the fact—the lowering, through the crevices of the rock, the pencil and paper for him to write upon—the sending two lines of poetry, with the request that he would return the corresponding lines—the shrill and peculiar whistle—the inimitable exclamations of "*Palmer! Palmer! Palmer!*"—all these things prove how great was his alarm—they corroborate Palmer's story, and tend to establish the conspiracy.

Joseph Knapp had a part to act in this matter; he must have opened the window, and secreted the key—he had free access to every part of the house—he was accustomed to visit there—he went in and out at his pleasure—he could do this without being suspected—he is proved to have been there the Saturday preceding.

If all these things, taken in connection, do not prove that Capt. White was murdered in pursuance of a conspiracy—then the case is at an end.

Savary's testimony is wholly unexpected. He was called, for a different purpose. When asked who the person was, that he saw come out of Capt. White's yard between three and four o'clock in the morning,—he answered *Frank Knapp*.—I am not clear this is not true. There may be many circumstances of importance connected with this; though we believe the murder to have been committed between ten and eleven o'clock. The letter to Dr. Barstow states it to have been done about *eleven o'clock*—it states it to have been done *with a blow on the head*, from a weapon loaded with lead. Here is too great a correspondence with the reality, not to

have some meaning to it. Dr. Peirson was always of the opinion that the two classes of wounds were made with different instruments, and by different hands—It is possible, that one class was inflicted at one time, and the other at another. It is possible, that on the last visit, the pulse might not have entirely ceased to beat; and then the finishing stroke was given—It is said, when the body was discovered, some of the wounds weeped, while the others did not. They may have been inflicted from mere wantonness. It was known that Capt. White was accustomed to keep specie by him in his chamber—this perhaps may explain the last visit—It is proved, that this defendant was in the habit of retiring to bed, and leaving it afterwards, without the knowledge of his family—perhaps he did so on this occasion—we see no reason to doubt the fact—and it does not shake our belief that the murder was committed early in the night.

What are the probabilities as to the time of the murder? Mr. White was an aged man;—he usually retired to bed at about half past nine—he slept soundest, in the early part of the night—usually awoke in the middle and latter part—and his habits were perfectly well known. When would persons, with a knowledge of these facts, be most likely to approach him? most certainly, in the first hour of his sleep. This would be the safest time. If seen then, going to or from the house, the appearance would be least suspicious. The earlier hour would then have been most probably selected.

Gentlemen, I shall dwell no longer on the evidence which tends to prove that there was a conspiracy, and that the Prisoner was a conspirator. All the circumstances concur to make out this point. Not only Palmer swears to it, in effect, and Leighton, but Allen mainly supports Palmer, and Osborn's books lend confirmation, so far as possible from such a source. Palmer is contradicted in nothing, either by any other witness, or any proved circumstance, or occurrence. Whatever could be expected to support him, does support him. All the evidence clearly manifests, I think, that there was a conspiracy; that it originated with J. Knapp; that defendant became a party to it, and was one of its conductors, from first to last. One of the most powerful circumstances, is Palmer's letter from Belfast. The amount of this was, a direct charge on the Knapps, of the authorship of this murder. How did they treat this charge, like honest men, or like guilty men? We have seen how it was treated. J. Knapp fabricated letters, charging another person, and caused them to be put into the Post office.

I shall now proceed on the supposition, that it is proved that there was a conspiracy to murder Mr. White, and that the Prisoner was party to it.

The second, and the material inquiry is, *was the Prisoner present, at the murder, aiding and abetting therein?*

This leads to the legal question in the case, what does the law mean, when it says, to charge him as a principal, "he must be present aiding and abetting in the murder."

In the language of the late Chief Justice, "it is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator of the victim, to make him a principal. If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, *having knowledge of the purpose and object of the assassin*,—this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder."

"If he be at a distance co-operating"—this is not a distance to be measured by feet or rods—if the intent to lend aid, combine with a knowledge that the murder is to be committed; and the person so intending, be so situate that he can by any possibility lend this aid, in any manner,

then he is *present* in legal contemplation. He need not lend any actual aid : to be ready to assist, is assisting.

There are two sorts of murder ; the distinction between them, it is of essential importance to bear in mind.—1. Murder in an affray, or upon sudden and unexpected provocation :—2. Murder secretly, with a deliberate, predetermined intention to commit murder. Under the first class, the question usually is, whether the offence be murder or manslaughter, in the person who commits the deed.—Under the second class, it is often a question whether others, than he who actually did the deed, were present aiding and assisting thereto. Offences of this kind ordinarily happen when there is no body present except those who go on the same design. If a Riot should happen in the Court House, and one should kill another—this may be murder, or it may not, according to the intention with which it was done ; which is always matter of fact to be collected from the circumstances at the time. But in secret murders, premeditated and determined on, there can be no doubt of the murderous intention ;—there can be no doubt, if a person be present, knowing a murder is to be done, of his concurring in the act ;—his being there is proof of his intent to aid and abet—else why is he there ?

It has been contended, that proof must be given that the person accused did actually afford aid, did lend a hand in the murder itself ;—and without this proof, although he may be near by, he may be presumed to be there for an innocent purpose ;—he may have crept silently there to hear the news, or from mere curiosity to see what was going on. Preposterous—absurd ! Such an idea shocks all common sense. A man is found to be a conspirator to do a murder ; he has planned it ; he has assisted in arranging the time, the place, and the means ; and he is found, in the place, and at the time, and yet it is suggested that he might have been there, not for co-operation and concurrence, but from curiosity !—Such an argument deserves no answer.—It would be difficult to give it one, in decorous terms. Is it not to be taken for granted, that a man seeks to accomplish his own purposes ?—When he has planned a murder, and is present at its execution, is he there to forward, or to thwart, his own design ?—Is he there to assist, or there to prevent ?—But, “ Curiosity ! ”—He may be there from mere “ Curiosity ! ”—Curiosity, to witness the success of the execution of his own plan of murder !—The very walls of a Court house ought not to stand—the plough share should run through the ground it stands on, where such an argument could find toleration.

It is not necessary that the abettor should actually lend a hand—that he should take a part in the act itself ;—if he be present, ready to assist—that is assisting. Some of the doctrines advanced would acquit the defendant, though he had gone to the bed chamber of the deceased,—though he had been standing by, when the assassin gave the blow—this is the argument we have heard to day.—(The Court here said they did not so understand the argument of the counsel for defendant.—Mr. DEXTER said “ the intent and power alone must co-operate.”) Mr. Webster continued, no doubt the law is, that being ready to assist is assisting, if he has the power to assist, in case of need. And it is so stated by Foster, who is a high authority. “ If A. happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavourth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behaviour of his, though highly criminal, will not of itself render him either principal or accessory.” “ But if a fact amounting to murder should be committed in prosecution of some unlawful purpose, *though it were but a bare trespass*, to which A. in the case last stated had consented, and he had gone in order to give assistance, if need were, for carrying it into execution, this would have amounted to murder in him, and in every person present and joining with him.” “ If the fact was committed in prosecution of the original purpose *which was unlawful*, the whole party will be involved in the guilt of him who gave the blow. For in combina-



tions of this kind, the mortal stroke, though given by one of the party, is considered in the eye of the law, and of sound reason too, as given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike."—The author in speaking of being present, means actual presence—not *actual* in opposition to *constructive*, for the law knows no such distinction. There is but one presence—and this is the situation from which aid, or supposed aid may be rendered. The law does not say where he is to go—or how near he is to go—but somewhere where he may give assistance, or where the perpetrator may suppose that he may be assisted by him. Suppose that he is acquainted with the design of the murderer, and has a knowledge of the time when it is to be carried into effect, and goes out with a view to render assistance, if need be; why, then, even though the murderer does not know of this, the person so going out will be an abettor in the murder. It is contended that the prisoner at the bar, could not be a principal, he being in Brown street, because he could not there render assistance. And you are called upon to determine this case, according as you may be of opinion, whether Brown street was, or was not, a suitable, convenient, well chosen place, to aid in this murder. This is not the true question. The inquiry is, not whether you would have selected this place in preference to all others, or whether you would have selected it at all—if they chose it, why should we doubt about it?—how do we know the use they intended to make of it, or the kind of aid that he was to afford by being there? The question for you to consider is, did the defendant go into Brown street *in aid of this murder*? Did he go there by agreement, by appointment, with the perpetrator? If so, every thing else follows. The main thing—indeed the only thing is,—to inquire, whether he was in Brown street by appointment with Richard Crowninshield—it might be to keep general watch—to observe the lights, and advise as to time of access—to meet the prisoner on his return, to advise him as to his escape—to examine his clothes, to see if any marks of blood—to furnish exchange of clothes, or new disguise if necessary—to tell him through what streets he could safely retreat—or whether he could deposit the club in the place designed—or it might be without any distinct object; but merely to afford that encouragement which would be afforded, by Richard Crowninshield's consciousness that he was near. It is of no consequence, whether in your opinion, the place was well chosen or not, to afford aid;—if it was so chosen, if it was by appointment, that he was there, that is enough—Suppose Richard Crowninshield when applied to to commit the murder had said, "I won't do it unless there can be some one near by to favour my escape;—I won't go unless you will stay in Brown street"—upon the gentleman's argument, he would not be an aider and abettor in the murder, because the place was not well chosen; though it is apparent, that the being in the place chosen, was a condition, without which, the murder would have never happened.

You are to consider the defendant as one in the league,—in the combination to commit the murder. If he was there by appointment, with the perpetrator, he is an abettor. The concurrence of the perpetrator in his being there, is proved by the previous evidence of the conspiracy. If Richard Crowninshield, for any purpose whatsoever, made it a condition of the agreement, that Frank Knapp should stand as *backer*, then Frank Knapp was an aider and abettor—no matter what the aid was—of what sort it was, or degree—be it never so little. Even if it were to judge of the hour, when it was best to go—or to see when the lights were extinguished—or to give an alarm if any one approached. Who better calculated to judge of these things than the murderer himself? and if he so determined them, that is sufficient.

*Now as to the facts*—Frank Knapp knew that the murder was that night to be committed—he was one of the conspirators—he knew the object—he knew the time;—he had that day been to Wenham to see Je-

Joseph, and probably to Danvers to see Richard Crowninshield, for he kept his motions secret, he had that day hired a horse and chaise of Osborn, and attempted to conceal the purpose for which it was used—he had intentionally left the *place* and the *price* blank on Osborn's books—he went to Wenham by the way of Danvers—he had been told the week before, to hasten Dick—he had seen the Crowninshields several times within a few days—he had a saddle horse the Saturday night before—he had seen Mrs. Beckford, at Wenham, and knew she would not return that night. She had not been away before for six weeks, and probably would not soon be again—he had just come from there—every day, for the week previous, he had visited one or other of these conspirators, save Sunday, and then probably he saw them in town. When he saw Joseph on the 6th, Joseph had prepared the house and would naturally tell him of it—there were constant communications between them—daily and nightly visitation—too much knowledge of these parties and this transaction, to leave a particle of doubt on the mind of any one, that Frank Knapp knew that the murder was to be done this night.—The hour was come and he knew it—if so, and he was in Brown street, without explaining why he was there—can the Jury for a moment doubt, whether he was there to countenance, aid or support;—or for curiosity alone;—or to learn how the wages of sin and death were earned by the perpetrator?

(Here Mr. Webster read the law from Hawkins. 1. Hawk. 204. Lib. 1. chap. 32. sec. 7.)

The perpetrator would derive courage, and strength, and confidence, from the knowledge of the fact that one of his associates was near by. If he was in Brown street, he could have been there for no other purpose. If there for this purpose, then he was in the language of the law *present aiding and abetting* in the murder.

His interest lay in being somewhere else. If he had nothing to do with the murder—no part to act—why not stay at home? Why should he jeopard his own life, if it was not agreed that he should be there? He would not voluntarily go where the very place would probably cause him to swing if detected. He would not voluntarily assume the place of danger. His taking this place, proves that he went to give aid. His staying away would have made an alibi. If he had nothing to do with the murder, he would be at home, where he could prove his alibi—He knew he was in danger, because he was guilty of the conspiracy, and if he had nothing to do, would not expose himself to suspicion or detection.

Did the prisoner at the bar countenance this murder? Did he concur, or did he non-concur, in what the perpetrator was about to do? Would he have tried to shield him? Would he have furnished his cloak for protection? Would he have pointed out a safe way of retreat? As you would answer these questions, so you should answer the general question—whether he was there *consenting to the murder*, or whether he was there *a spectator only*?

One word more on this *presence*, called *constructive presence*. What aid is to be rendered? Where is the line to be drawn, between acting, and omitting to act? Suppose he had been in the house—suppose he had followed the perpetrator to the chamber,—what could he have done? This was to be a murder by stealth—it was to be a secret assassination—it was not their purpose to have an open combat—they were to approach their victim unawares, and silently give the fatal blow. But if he had been in the chamber, no one can doubt that he would have been an abettor—because of his presence and ability to render services, if needed. What service could he have rendered, if there? Could he have helped him fly?—Could he have aided the silence of his movements? Could he have facilitated his retreat, on the first alarm? Surely, this was a case, where there was more of safety in going alone, than with another, where company would truly embarrass. Richard Crowninshield would prefer

to go alone. He knew his errand too well. His nerves needed no collateral support. He was not the man to take with him a trembling companion. He would prefer to have his aid at a distance. He would not wish to be embarrassed by his presence. He would prefer to have him out of the house. He would prefer that he should be in Brown street. But, whether in the chamber, in the house, in the garden, or in the street, whatsoever is aiding in *immediate presence*, is aiding in *constructive presence*—any thing that is aid in one case is aid in the other.

(Reads from Hawkins. 4. Hawk. 201. Lib. iv. chap. 29. sec. 8.)

If then the aid be any where, that emboldens the perpetrator—that affords him hope or confidence in his enterprise,—it is the same as though he stood at his elbow with his sword drawn—his being there ready to act, with the power to act, that is what makes him an abettor. (Here Mr. Webster referred to Kelly's case, and Hyde's case, &c. cited by counsel for the defendant, and showed that they did not militate with the doctrine for which he contended. The difference is, in those cases there was open violence—this was a case of secret assassination. The aid must meet the occasion. Here no *acting* was necessary, but watching, concealment of escape, management.)

What are the Facts in relation to this presence. Frank Knapp is proved a conspirator—proved to have known that the deed was now to be done. Is it not probable that he was in Brown street to concur in the murder? There were four conspirators—It was natural that some one of them would go with the perpetrator. Richard Crowninshield was to be the perpetrator—he was to give the blow. No evidence of any casting of the parts for the others. The defendant would probably be the man to take the second part. He was fond of exploits—he was accustomed to the use of sword canes, and dirks. If any aid was required, he was the man to give it. At least there is no evidence to the contrary of this.

Aid could not have been received from Joseph Knapp, or from George Crowninshield. Joseph Knapp was at Wenham, and took good care to prove that he was there. George Crowninshield has proved satisfactorily where he was—that he was in other company, such as it was, until 11 o'clock. This narrows the inquiry—This demands of the prisoner to show, that if he was not in this place, where he was? It calls on him loudly to show this, and to show it truly—if he could show it, he would do it—If he don't tell, and that truly, it is against him. The defence of an *alibi* is a double edged sword. He knew that he was in a situation, that he might be called upon to account for himself. If he had had no particular appointment, or business to attend to; he would have taken care to have been able so to have accounted—He would have been out of town, or in some good company. Has he accounted for himself on that night to your satisfaction?

The prisoner has attempted to prove an *alibi*, in two ways. In the first place, by four young men with whom he says he was in company on the Evening of the murder, from 7 o'clock, till near 10 o'clock—this depends upon the *certainty of the night*. In the second place, by his family, from 10 o'clock afterwards—this depends upon the *certainty of the time of the night*. These two classes of proof have no connection with each other. One may be true, and the other false, or they may both be true, or both be false. I shall examine this testimony with some attention, because on a former trial, it made more impression on the minds of the Court, than on my own mind. I think when carefully sifted and compared, it will be found to have in it more of *plausibility* than *reality*.

Mr. Page testifies, that on the evening of the 6th of April, he was in company with Burchmore, Balch, and Forrester—and that he met the defendant about 7 o'clock, near the Salem Hotel—that he afterwards met him at Remond's, about 9 o'clock, and that he was in company with him a considerable part of the evening. This young gentleman is a member of College, and says that he came in town the Saturday evening previous,

that he is now able to say that it was the night of the murder, when he walked with Frank Knapp, from the recollection of the fact, that he called himself to an account, on the morning after the murder, as was natural for men to do when an extraordinary occurrence happens. Gentlemen, this kind of evidence is not satisfactory—general impressions as to time are not to be relied on. If I were called upon to state the particular day on which any witness testified in this cause, I could not do it. Every man will notice the same thing in his own mind. There is no one of these young men that could give any account of himself for any *other* day in the month of April. They are made to remember the fact, and then they think they remember the time. He has no means of knowing it was Tuesday more than any other time. He did not know it at first—he could not know it afterwards. He says he called himself to an account—this has no more to do with the murder, than with the man in the moon. Such testimony is not worthy to be relied on, in any forty shilling cause. What occasion had he to call himself to an account? Did he suppose, that he should be suspected? Had he any intimation of this conspiracy?

Suppose, gentlemen, you were either of you asked, where you were, or what you were doing, on the 15th day of June—you could not answer this question, without calling to mind some events to make it certain—just as well may you remember on what you dined on each day of the year past. Time is identical. Its subdivisions are all alike. No man knows one day from another, or one hour from another, but by some fact connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by the understanding. The flow of time is known only by something which marks it; and he who speaks of the date of occurrences with nothing to guide his recollection, speaks at random, and is not to be relied on. This young gentleman remembers the facts, and occurrences—he knows nothing why they should not have happened on the evening of the sixth; but he knows no more. All the rest, is evidently conjecture or impression.

Mr. White informs you that he told him he could not tell what night it was.—The first thoughts are all that are valuable in such case. They miss the mark by taking second aim.

Mr. Balch believes, but is not sure, that he was with Frank Knapp on the evening of the murder. He has given different accounts of the time. He has no means of making it certain. All he knows is, that it was some evening before Fast. But whether Monday, Tuesday or Saturday, he cannot tell.

Mr. Burchmore says, to the best of his belief, it was the evening of the murder. Afterwards he attempts to speak positively, from recollecting that he mentioned the circumstance to William Peirce, as he went to the Mineral Spring on Fast day. Last Monday morning, he told Col. Putnam he could not fix the time. This witness stands in a much worse plight than either of the others. It is difficult to reconcile all he has said, with any belief in the accuracy of his recollections.

Mr. Forrester does not speak with any certainty as to the night—and it is very certain, that he told Mr. Loring and others, that he did not know what night it was.

Now, what does the testimony of these four young men amount to? The only circumstance, by which they approximate to an identifying of the night is—that three of them say it was cloudy—they think their walk was either on Monday or Tuesday evening; and it is admitted that Monday evening was clear—whence they draw the inference that it must have been Tuesday.

But, fortunately, there is one *fact* disclosed in their testimony that settles the question. Balch says, that on the evening whenever it was, that he saw the Prisoner, the Prisoner told him he was going out of town on horse back; for a distance of about twenty minutes ride, and that he was going to get a horse at Osborn's. This was about 7 o'clock. At about

9, Balch says he saw the prisoner again, and was then told by him, that he had had his ride, and had returned.—Now it appears by Osborn's books, that the prisoner had a saddle horse from his stable, not on Tuesday evening, the night of the murder, but on the Saturday evening previous. This fixes the time, about which these young men testify, and is a complete answer and refutation of the attempted *alibi*, on Tuesday evening.

I come now to speak of the testimony adduced by the defendant to explain where he was after 10 o'clock on the night of the murder. This comes chiefly from members of the family—from his Father and brothers.

It is agreed that the affidavit of the prisoner, should be received as evidence of what his brother Samuel H. Knapp, would testify if present. S. H. Knapp says that about ten minutes past ten o'clock, his brother F. Knapp on his way to bed, opened his chamber door, made some remarks, closed the door, and went to his chamber, and that he did not hear him leave it afterwards. How is this witness able to fix the time at ten minutes past ten? There is no circumstance mentioned, by which he fixes it. He had been in bed, probably asleep—and was aroused from his sleep, by the opening of the door. Was he in a situation to speak of time with precision? Could he know, under such circumstances, whether it was ten minutes past ten, or ten minutes before eleven, when his brother spoke to him? What would be the natural result, in such a case? But we are not left to conjecture this result. We have positive testimony on this point. Mr. Webb tells you that Samuel told him on the 8th of June, "that he did not know what time his brother Frank came home—and that he was not at home when he went to bed." You will consider this testimony of Mr. Webb as indorsed upon this affidavit—and with this indorsement upon it, you will give it its due weight.—This statement was made to him after Frank was arrested.

I come to the testimony of the Father. I find myself incapable of speaking of him or his testimony with severity. Unfortunate old man! Another Lear, in the conduct of his children; another Lear, I fear, in the effect of his distress upon his mind and understanding. He is brought here to testify, under circumstances that disarm severity, and call loudly for sympathy. Though it is impossible not to see that his story cannot be credited, yet I am not able to speak of him otherwise than in sorrow and grief. Unhappy father! he strives to remember, perhaps persuades himself that he does remember, that on the evening of the murder he was himself at home at ten o'clock.—He thinks,—or seems to think, that his son came in, at about five minutes past ten.—He fancies that he remembers his conversation—he thinks he spoke of bolting the door—he thinks he asked the time of night—he seems to remember his then going to his bed—Alas!—these are but the swimming fancies of an agitated and distressed mind—Alas! they are but the dreams of hope, its uncertain lights, flickering on the thick darkness of parental distress. Alas! the miserable father knows nothing, in reality, of all these things.

Mr. Shepard says that the first conversation he had with Mr. Knapp, was soon after the murder, and *before* the arrest of his sons. Mr. Knapp says it was *after* the arrest of his sons. His own fears led him to say to Mr. Shepard that his "son Frank was at home that night—and so Phippen told him, or as Phippen told him"—Mr. Shepard says that he was struck with the remark at the time—that it made an unfavorable impression on his mind—he does not tell you what that impression was—but when you connect it with the previous inquiry he had made—Whether Frank had continued to associate with the Crowninshields? and recollect that the Crowninshields were then known to be suspected of this crime—can you doubt what this impression was?—can you doubt as to the fears he then had?

This poor old man tells you, that he was greatly perplexed at the time—that he found himself in embarrassed circumstances—that on this very night he was engaged in making an assignment of his property to

his friend Mr. Shepard—If ever charity should furnish a mantle for error, it should be here. Imagination cannot picture a more deplorable, distressed condition.

The same general remarks may be applied to his conversation with Mr. Treadwell, as have been made upon that with Mr. Shepard. He told him that he believed Frank was at home about the usual time. In his conversations with either of these persons, he did not pretend to know, of his own knowledge, the time that he came home. He now tells you, positively, that he recollects the time, and that he so told Mr. Shepard. He is directly contradicted by both these witnesses, as respectable men as Salem affords.

This idea of alibi, is of recent origin. Would Samuel Knapp have gone to sea, if it were then thought of? His testimony, if true, was too important to be lost. If there be any truth in this part of the alibi, it is so near in point of time, that it cannot be relied on—The mere variation of half an hour would avoid it—The mere variations of different time pieces would explain it.

Has the defendant proved where he was on that night? If you doubt about it—there is an end of it. The burthen is upon him to satisfy you beyond all reasonable doubt. Osborn's books, in connection with what the young men state, are conclusive I think on this point. He has not, then, accounted for himself—he has attempted it, and has failed. I pray you to remember, gentlemen, that this is a case, in which the prisoner would, more than any other, be rationally able to account for himself, on the night of the murder, if he could do so. He was in the conspiracy, he knew the murder was then to be committed, and if he himself was to have no hand in its actual execution, he would of course, as matter of safety and precaution, be somewhere else, and be able to prove, afterwards, that he had been somewhere else. Having this motive to prove himself elsewhere, and the power to do it, if he were elsewhere, his failing in such proof must necessarily leave a very strong inference against him.

But, Gentlemen, let us now consider what is the evidence produced on the part of the Government to prove that John Francis Knapp, the prisoner at the bar, was in Brown street on the night of the murder. This is a point of vital importance in this cause. Unless this be made out, beyond reasonable doubt, the law of *presence* does not apply to the case. The Government undertake to prove that he was present, aiding in the murder, by proving that he was in Brown street for this purpose. Now, what are the undoubted facts? They are, that two persons were seen in that street, at several times, during that evening, under suspicious circumstances;—under such circumstances as induced those who saw them, to watch their movements. Of this, there can be no doubt.—Mirick saw a man standing at the post opposite his store, from 15 minutes before 9, until 20 minutes after, dressed in a full frock coat, glazed cap, &c., in size and general appearance answering to the prisoner at the bar. This person was waiting there—and whenever any one approached him, he moved to and from the corner, as though he would avoid being suspected, or recognized. Afterwards, two persons were seen by Webster, walking in Howard street, with a slow, deliberate movement, that attracted his attention.—This was about 1-2 past 9. One of these he took to be the prisoner at the bar—the other he did not know.

About 1-2 past 10, a person is seen sitting on the Rope-Walk steps, wrapped in a cloak. He drops his head when passed, to avoid being known. Shortly after, two persons are seen to meet in this street, without ceremony or salutation, and in a hurried manner to converse for a short time—then to separate and run off with great speed. Now, on this same night, a gentleman is slain,—murdered in his bed,—his house being entered by stealth from without, and his house situated within 300 feet of this street. The windows of his chamber were in plain sight from this

street—a weapon of death is afterwards found in a place where these persons were seen to pass—in a retired place around which they had been seen lingering. It is now known, that this murder was committed by a conspiracy of four persons, conspiring together for this purpose. No account is given who these suspected persons thus seen in Brown street and its neighborhood were. Now, I ask, Gentlemen, whether you or any man can doubt, that this murder was committed, by the persons who were thus in and about Brown street? Can any person doubt that they were there for purposes connected with this murder? If not for this purpose, what were they there for? When there is a cause so near at hand, why wander into conjecture for an explanation? Common sense requires you to take the nearest adequate cause for a known effect. Who were these suspicious persons in Brown street? There was something extraordinary about them—something noticeable, and noticed at the time—something in their appearance that aroused suspicion. And a man is found the next morning murdered in the near vicinity.

Now, so long as no other account shall be given of those suspicious persons, so long the inference must remain irresistible, that they were the murderers. Let it be remembered, that it is already shown that this murder was the result of conspiracy, and of concert; let it be remembered, that the house, having been opened from within, was entered, by stealth, from without. Let it be remembered that Brown street, where these persons were repeatedly seen, under such suspicious circumstances, was a place from which every occupied room in Mr. White's house was clearly seen; let it be remembered, that the place, though thus very near to Mr. White's house, was a retired and lonely place; and let it be remembered that the instrument of death was afterwards found concealed, very near the same spot. Must not every man come to the conclusion, that these persons, thus seen in Brown street, were the murderers. Every man's own judgment, I think, must satisfy him that this must be so. It is a plain deduction of common sense. It is a point, on which each age of you may reason like a Hale, or a Mansfield. The two occurrences explain each other. The murder shows why these persons were thus lurking, at that hour, in Brown street, and their lurking in Brown street shows who committed the murder.

If, then, the persons in and about Brown street, were the plotters and executors of the murder of Capt. White, we know who they were, and you know that *there* is one of them.

This fearful concatenation of circumstances puts him to an account. He was a conspirator. He had entered into this plan of murder. The murder is committed, and he is known to have been within three minutes walk of the place. He must account for himself. He has attempted this and failed. Then, with all these general reasons to show he was actually in Brown street, and his failures in his ALIBI, let us see what is the direct proof of his being there. But first, let me ask, is it not very remarkable, that there is no attempt to show where Richard Crowninshield jr. was on that night? We hear nothing of him. He was seen, in none of his usual haunts, about the town. Yet, if he was the actual perpetrator of the murder, which nobody doubts, he was in the town, somewhere. Can you, therefore, entertain a doubt, that he was one of the persons seen in Brown street? And as to the prisoner, you will recollect, that since the testimony of the young men has failed to show where he was, that evening, the last we hear or know of him, on the day preceding the murder, is, that at 4 o'clock P. M. he was at his brothers, in Wenham. He had left home, after dinner, in a manner doubtless designed to avoid observation, and had gone to Wenham, probably by way of Danvers. As we hear nothing of him, after 4 o'clock, P. M. for the remainder of the day and evening, as he was one of the conspirators, as Richard Crowninshield jr. was another, as Richard Crowninshield jr. was in town in the evening, and yet seen in no usual place of resort the in-

ference is very fair that Richard Crowninshield jr. and the prisoner were together, acting in execution of their conspiracy. Of the four conspirators, J. J. Knapp jr. was at Wenham, and George Crowninshield has been accounted for; so that if the persons, seen in Brown street, were the murderers, one of them must have been Richard Crowninshield jr. and the other must have been the prisoner at the bar. Now, as to the proof of his identity with one of the persons seen in Brown street.

Mr. Mirick, a cautious witness, examined the person he saw closely, in a light night, and says that he thinks the prisoner at the bar is the same person—and that he should not hesitate at all, if he were seen in the same dress. His opinion is formed, partly from his own observation, and partly from the description of others. But this description turns out to be only in regard to the dress. It is said, that he is now more confident, than on the former trial. If he has varied in his testimony, make such allowance as you may think proper. I do not perceive any material variance. He thought him the same person, when he was first brought to Court, and as he saw him get out of the chaise. This is one of the cases, in which a witness is permitted to give an opinion. This witness is as honest as yourselves—neither willing nor swift—but he says, he believes it was the man; “this is my opinion,” and this it is proper for him to give. If partly founded on what he has *heard*, then his opinion is not to be taken; but, if on what he *saw*, then you can have no better evidence. I lay no stress on similarity of dress. No man will ever be hanged by my voice on such evidence. But then it is proper to notice, that no inferences drawn from any *dissimilarity* of dress, can be given in the prisoner's favor; because, in fact, the person seen by Mirick was dressed like the prisoner.

The description of the person seen by Mirick answers to that of the prisoner at the bar. In regard to the supposed discrepancy of statements, before and now, there would be no end to such minute inquiries. It would not be strange if witnesses should vary. I do not think much of slight shades of variation. If I believe the witness is honest, that is enough. If he has expressed himself more strongly, now than then, this does not prove him false.

Peter E. Webster saw the prisoner at the bar, as he then thought and still thinks, walking in Howard street at 1-2 past 9 o'clock. He then thought it was Frank Knapp, and has not altered his opinion since. He knew him well—he had long known him. If he then thought it was he, this goes far to prove it. He observed him the more, as it was unusual, to see gentlemen walk there at that hour. It was a retired, lonely street. Now, is there reasonable doubt that Mr. Webster did see him there that night? How can you have more proof than this? He judged by his walk, by his general appearance, by his deportment. We all judge in this manner. If you believe he is right, it goes a great way in this case. But then this person it is said had a cloak on, and that he could not, therefore, be the same person that Mirick saw. If we were treating of men that had no occasion to disguise themselves or their conduct, there might be something in this argument. But as it is, there is little in it. It may be presumed, that they would change their dress. This would help their disguise. What is easier than to throw off a cloak, and again put it on? Perhaps he was less fearful of being known when alone, than when with the perpetrator.

Mr. Southwick, swears all that a man can swear. He has the best means of judging that could be had at the time. He tells you that he left his father's house at 1-2 past 10 o'clock, and as he passed to his own house in Brown street, he saw a man sitting on the steps of the Rope walk, &c. &c.—that he passed him three times, and each time he held down his head, so that he did not see his face. That the man had on a cloak, which was not wrapped around him, and a glazed cap. That he took the man to be Frank Knapp at the time, that when he went into his



house, he told his wife that he thought it was Frank Knapp;—that he knew him well, having known him from a boy. And his wife swears that he did so tell her at the time. What could mislead this witness at the time? He was not then suspecting Frank Knapp of any thing. He could not then be influenced by any prejudice. If you believe that the witness saw Frank Knapp in this position, at this time, it proves the case. Whether you believe it or not, depends upon the credit of the witness. He swears it—if true, it is solid evidence. Mrs. Southwick supports her husband. Are they true? Are they worthy of belief? If he deserves the epithets applied to him, then he ought not to be believed. In this fact, they cannot be mistaken, they are right, or they are perjured. As to his not speaking to Frank Knapp, that depends upon their intimacy. But a very good reason is, Frank chose to disguise himself. This makes nothing against his credit. But it is said that he should not be believed. And why? Because, it is said, he himself now tells you that when he testified before the Grand Jury at Ipswich he did not then say that he thought the person he saw in Brown street was Frank Knapp, but that “the person was about the size of Selman.” The means of attacking him, therefore come from himself. If he is a false man, why should he tell truths against himself? they rely on his veracity to prove that he is a liar. Before you can come to this conclusion, you will consider, whether all the circumstances are now known, that should have a bearing on this point. Suppose that when he was before the Grand Jury he was asked by the Attorney this question, “was the person you saw in Brown street about the size of Selman?” and he answered, yes. This was all true. Suppose also that he expected to be inquired of further—and no further questions were put to him? Would it not be extremely hard to impute to him perjury for this? It is not uncommon for witnesses, to think that they have done all their duty, when they have answered the questions put to them? But suppose that we admit, that he did not then tell all he knew, this does not affect the *fact* at all—because he did tell, at the time, in the hearing of others, that the person he saw was Frank Knapp. There is not the slightest suggestion against the veracity or accuracy of Mrs. Southwick. Now, she swears positively, that her husband came into the house and told her that he had seen a person, on the Rope walk steps, and believed it was Frank Knapp.

It is said, that Mr. Southwick is contradicted, also, by Mr. Shillaber. I do not so understand Mr. Shillaber's testimony. I think what they both testify is reconcileable, and consistent. My learned brother said on a similar occasion, that there is more probability in such cases, that the persons hearing should misunderstand, than that the person speaking, should contradict himself. I think the same remarks applicable here.

You have all witnessed the uncertainty of testimony, when witnesses are called to testify what other witnesses said. Several respectable counsellors have been called on, on this occasion, to give testimony of that sort. They have, every one of them, given different versions. They all took minutes at the time, and without doubt intend to state the truth. But still they differ. Mr. Shillaber's version is different from every thing that Southwick has stated elsewhere. But little reliance is to be placed on slight variations in testimony, unless they are manifestly intentional. I think that Mr. Shillaber must be satisfied that he did not rightly understand Mr. Southwick. I confess I misunderstood Mr. Shillaber on the former trial, if I now rightly understand him. I therefore, did not then recall Mr. Southwick to the stand. Mr. Southwick, as I read it, understood Mr. Shillaber as asking him about a person coming out of Newbury street, and whether, for aught he knew, it might not be Richard Crowninshield jr. He answered that he could not tell. He did not understand Mr. Shillaber, as questioning him, as to the person, whom he saw sitting on the steps of the Rope walk. Southwick, on this trial, having heard Mr. Shillaber, has been recalled to the stand, and states

that Mr. Shillaber entirely misunderstood him. This is certainly most probable; because the controlling fact in the case is not controverted—that is, that Southwick did tell his wife, at the very moment he entered his house, that he had seen a person on the Rope walk steps, whom he believed to be Frank Knapp. Nothing can prove, with more certainty than this, that Southwick, at the time, *thought* the person whom he thus saw to be the prisoner at the bar.

Mr. Bray is an acknowledged accurate and intelligent witness. He was highly complimented by my brother, on the former trial, although he now charges him with varying his testimony. What could be his motive? You will be slow in imputing to him any design of this kind. I deny altogether, that there is any contradiction. There may be differences, but not contradiction. These arise from the difference in the questions put; the difference between *believing* and *knowing*. On the first trial, he said he did not *know* the person, and now says the same. Then we did not do all we had a right to do. We did not ask him who he *thought* it was. Now, when so asked, he says he *believes* it was the prisoner at the bar. If he had then been asked this question, he would have given the same answer. That he has expressed himself stronger I admit; but he has not contradicted himself. He is more confident now, and that is all. A man may not assert a thing, and still not have any doubt upon it. Cannot every man see this distinction to be consistent? I leave him in that attitude; that only is the difference. On questions of identity, opinion is evidence. We may ask the witness, either if he *knew* who the person seen was, or who he *thinks* he was. And he may well answer, as Capt. Bray has answered, that he does not *know* who it was, but that he *thinks* it was the prisoner.

We have offered to produce witnesses to prove, that as soon as Bray saw the prisoner, he pronounced him the same person. We are not at liberty to call them to corroborate our own witness. How then could this fact of prisoner's being in Brown street, be better proved? If ten witnesses had testified to it, it would be no better. Two men, who knew him well, took it to be Frank Knapp, and one of them so said, when there was nothing to mislead them. Two others, that examined him closely, now swear, to their opinion that he is the man.

Miss Jaqueth, saw three persons pass by the Rope walk, several evenings before the murder. She saw one of them pointing towards Mr. White's house. She noticed that another had something which appeared to be like an instrument of music; that he put it behind him, and attempted to conceal it. Who were these persons? This was but a few steps from the place where this apparent instrument of music (of *music* such as Richard Crowninshield jr. spoke of to Palmer) was afterwards found. These facts prove this a point of rendezvous for these parties. They show Brown street to have been the place for consultation, and observation; and to this purpose it was well suited.

Mr. Burns's testimony is also important. What was the defendant's object, in his private conversation with Burns? He knew that Burns was out that night; that he lived near Brown street, and that he had probably seen him; and he wished him to say nothing. He said to Burns, "if you saw any of your friends out that night, say nothing about it; my brother Jo. and I are your friends." This is plain proof, that he wished to say to him, if you saw me in Brown street that night, say nothing about it.

But it is said that Burns ought not to be believed because he mistook the color of the dagger, and because he has varied in his description of it. These are slight circumstances, if his general character be good. To my mind they are of no importance. It is for you to make what deduction you may think proper, on this account from the weight of his evidence. His conversation with Burns, if Burns is believed, shows two things; first, that he desired Burns not to mention it, if he had seen him

on the night of the murder ; second, that he wished to fix the charge of murder on Mr. Stephen White. Both of these prove his own guilt.

I think you will be of opinion, gentlemen, that Brown street was a *probable place* for the conspirators to assemble, and for an aid to be. If we knew their whole plan—and if we were skilled to judge in such a case, then we could perhaps determine on this point better. But it is a retired place, and still commands a full view of the house ;—a lonely place, but still a place of observation. Not so lonely that a person would excite suspicion to be seen walking there in an ordinary manner ;—not so public as to be noticed by many. It is near enough to the scene of action in point of law. It was their point of *centrality*. The Club was found near the spot—in a place provided for it—in a place that had been previously hunted out—in a concerted place of concealment.—*Here was their point of rendezvous*—Here might the lights be seen—Here might an aid be secreted—Here was he within call—Here might he be aroused by the sound of the *whistle*—Here might he carry the weapon—Here might he receive the murderer, after the murder.

Then, gentlemen, the general question occurs, is it satisfactorily proved, by all these facts and circumstances, that the defendant was in and about Brown street, on the night of the murder ?—considering, that the murder was effected by a conspiracy ;—considering, that he was one of the four conspirators ;—considering, that two of the conspirators have accounted for themselves, on the night of the murder, and were not in Brown street ;—considering that the Prisoner does not account for himself, nor show where he was ;—considering that Richard Crowninshield, the other conspirator, and the perpetrator, is not accounted for, nor shown to be elsewhere ;—considering, that it is now past all doubt that two persons were seen in and about Brown street, at different times, lurking, avoiding observation, and exciting so much suspicion that the neighbors actually watched them ;—considering, that if these persons, thus lurking in Brown street, at that hour, were not the murderers, it remains, to this day, wholly unknown, who they were, or what their business was ;—considering the testimony of Miss Jaqueth, and that the club was afterwards found near this place—considering, finally, that Webster and Southwick saw these persons, and then took one of them for the defendant, and that Southwick then told his wife so, and that Bray and Mirick examined them closely, and now swear to their belief that the prisoner was one of them ; it is for you to say, putting these considerations together, whether you believe the prisoner was actually in Brown street, at the time of the murder.

By the counsel for the defendant, much stress has been laid upon the question, whether Brown street was a place in which aid could be given? a place in which actual assistance could be rendered in this transaction ? This must be mainly decided, by their own opinion, who selected the place ; by what they thought at the time, according to their plan of operation.

If it was agreed that the prisoner should be there to assist, it is enough. If they thought the place proper for their purpose, according to their plan, it is sufficient.

Suppose we could prove expressly, that they agreed that Frank should be there, and he was there ;—and you should think it not a well chosen place, for aiding and abetting, must he be acquitted? No.—it is not what I think, or you think, of the appropriateness of the place—it is what they thought at the time.

If the Prisoner was in Brown street, by appointment and agreement with the perpetrator, for the purpose of giving assistance, if assistance should be needed, it may safely be presumed that the place was suited to such assistance as it was supposed by the parties might chance to become requisite.

If in Brown street, was he there by appointment? was he there to

aid, if aid were necessary? was he there, for, or against, the murderer? to concur, or to oppose? to favor or to thwart? Did the perpetrator know he was there—there waiting? If so, then it follows, he was there by appointment. He was at the post, half an hour—he was waiting for some body. This proves ~~appointment—arrangement—previous agreement~~;—then it follows, he was there to aid,—to encourage,—to embolden the perpetrator, and that is enough. If he were in such a situation as to afford aid, or that he was relied upon for aid;—then he was aiding and abetting. It is enough, that the conspirator desired to have him there. Besides, it may be well said, that he could afford just as much aid there, as if he had been in Essex street—as if he had been standing even at the gate, or at the window. It was not an act of power against power that was to be done,—it was a secret act, to be done by stealth. The aid was to be placed in a position secure from observation:—It was important to the security of both, that he should be in a lonely place. Now, it is obvious, that there are many purposes, for which he might be in Brown street.

1. Richard Crowninshield might have been secreted in the garden, and waiting for a signal.

2. Or he might be in Brown street, to advise him as to the time of making his entry into the house.

3. Or to favor his escape.

4. Or to see if the street was clear when he came out.

5. Or to conceal the weapon, or the clothes.

6. To be ready for any other unforeseen contingency.

Richard Crowninshield lived in Danvers—he would retire the most secret way. Brown street is that way—If you find him there, can you doubt, why he was there!

If, Gentlemen, the Prisoner went into Brown street, by appointment with the perpetrator, to render aid or encouragement, in any of these ways, he was *present*, in legal contemplation, aiding and abetting, in this murder. It is not necessary that he should have done any thing; it is enough, that he was ready to act, and in a place to act. If his being in Brown street, by appointment, at the time of the murder, emboldened the purpose, and encouraged the heart of the murderer, by the hope of instant aid, if aid should become necessary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder.

I now proceed, gentlemen, to the consideration of the testimony of Mr. Colman. Although this evidence bears on every material part of the cause, I have purposely avoided every comment on it, till the present moment, when I have done with the other evidence in the case. As to the admission of this evidence, there has been a great struggle, and its importance demanded it. The general rule of law is, that confessions are to be received as evidence. They are entitled to great or to little consideration, according to the circumstances under which they are made. Voluntary, deliberate confessions are the most important and satisfactory evidence. But confessions, hastily made, or improperly obtained, are entitled to little or no consideration. It is always to be inquired, whether they were purely voluntary, or were made under any undue influence of *hope* or *fear*; for, in general, if any influence were exerted on the mind of the person confessing, such confessions are not to be submitted to a Jury.

Who is Mr. Colman? He is an intelligent, accurate, and cautious witness. A gentleman of high and well known character; and of unquestionable veracity. As a clergyman, highly respectable; as a man, of fair name and fame.

Why was Mr. Colman with the prisoner? Joseph J. Knapp was his parishioner. He was the head of a family, and had been married by Mr. Colman. The interests of his family were dear to him. He felt for their afflictions, and was anxious to alleviate their sufferings. He went from the purest and best motives to visit Joseph Knapp. He came to save,

not to destroy—to rescue, not to take away life. In this family he thought there might be a chance to save one. It is a misconstruction of Mr. Colman's motives, at once the most strange and the most uncharitable, a perversion of all just views of his conduct and intentions, the most unaccountable, to represent him as acting, on this occasion, in hostility to any one, or as desirous of injuring or endangering any one. He has stated his own motives, and his own conduct, in a manner to command universal belief, and universal respect. For intelligence, for consistency, for accuracy, for caution, for candor, never did witness acquit himself better, or stand fairer. In all that he did, as a man, and all he has said, as a witness, he has shown himself worthy of entire regard.

Now, gentlemen, very important confessions, made by the prisoner, are sworn to by Mr. Colman. They were made in the prisoner's cell, where Mr. Colman had gone, with the prisoner's brother, N. P. Knapp. Whatever conversation took place, was in the presence of N. P. Knapp. Now, on the part of the prisoner, two things are asserted; first, that such inducements were suggested to the prisoner, in this interview, that any confessions by him ought not to be received.—Second, that, in point of fact, he made no such confessions, as Mr. Colman testifies to, nor, indeed, any confessions at all. These two propositions are attempted to be supported by the testimony of N. P. Knapp. These two witnesses, Mr. Colman and N. P. Knapp, differ entirely. There is no possibility of reconciling them. No charity can cover both. One or the other has sworn falsely. If N. P. Knapp be believed, Mr. Colman's testimony must be wholly disregarded. It is, then, a question of credit, a question of belief, between the two witnesses. As you decide between these, so you will decide on all this part of the case.

Mr. Colman has given you a plain narrative, a consistent account, and has uniformly stated the same things. He is not contradicted by any thing in the case, except Phippen Knapp. He is influenced as far as we can see by no bias, or prejudice, any more than other men, except so far as his character is now at stake. He has feelings on this point doubtless, and ought to have. If what he has stated be not true, I cannot see any ground for his escape. If he be a true man, he must have heard what he testifies. No treachery of memory brings to memory things that never took place. There is no reconciling his evidence with good intention, if the facts are not as he states them. He is on trial, as to his veracity.

The relation in which the other witness stands deserves your careful consideration. He is a member of the family. He has the lives of two brothers, depending, as he may think, on the effect of his evidence;—depending, on every word he speaks. I hope he has not another responsibility, resting upon him. By the advice of a friend, and that friend Mr. Colman, J. Knapp made a full and free confession, and obtained a promise of pardon. He has since, as you know, probably by the advice of other friends, retracted that confession, and rejected the offered pardon. Events will show who of these friends and advisers advised him best, and befriended him most. In the mean time, if this brother, the witness, be one of these advisers, and advised the retraction, he has, most emphatically, the lives of his brothers, resting upon his evidence, and upon his conduct. Compare the situation of these two witnesses. Do you not see mighty motive enough on the one side,—and want of all motive on the other? I would gladly find an apology for that witness, in his agonized feelings,—in his distressed situation;—in the agitation of that hour, or of this. I would gladly impute it to error, or to want of recollection, to confusion of mind, or disturbance of feeling.—I would gladly impute to any pardonable source, that which cannot be reconciled to facts, and to truth; but, even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclusion, however reluctantly, which that demands from us.

It is said, Phippen Knapp was probably correct, because he knew he

should be called as a witness. Witness—to what? When he says there was no confession, what could he expect to bear witness of? But I do not put it on the ground that he did not hear—I am compelled to put it on the other ground—that he did hear, and does not now truly tell what he heard.

If Mr. Colman were out of the case, there are other reasons why the story of Phippen Knapp should not be believed. It has in it inherent improbabilities. It is unnatural, and inconsistent with the accompanying circumstances. He tells you that they went “to the cell of Frank, to see if he had any objection to taking a trial, and suffering his brother to accept the offer of pardon”—in other words to obtain Frank’s consent to Joseph’s making a confession; and in case this consent was not obtained, that the pardon would be offered to Frank, &c. Did they bandy about the chance of life, between these two, in this way? Did Mr. Colman after having given this pledge to Joseph—after having received a disclosure from Joseph—go to the cell of Frank for such a purpose as this? It is impossible—it cannot be so.

Again. We know that Mr. Colman found the club the next day—that he went directly to the place of deposit, and found it at the first attempt,—exactly where he says he had been informed it was. Now Phippen Knapp says that Frank had stated nothing respecting the club—that it was not mentioned in that conversation. He says, also, that he was present in the cell of Joseph all the time that Mr. Colman was there—that he believes he heard all that was said in Joseph’s cell—and that he did not himself know where the club was—and never had known where it was, until he heard it stated in Court. Now, it is certain that Mr. Colman says, he did not learn the particular place of deposit of the club from Joseph—that he only learned from him that it was deposited under the steps of the Howard street Meeting House, without defining the particular steps—it is certain, also, that he had more knowledge of the position of the club, than this—else how could he have placed his hand on it so readily?—and where else could he have obtained this knowledge, except from Frank? (Here Mr. Dexter said that Mr. Colman had had other interviews with Joseph, and might have derived the information from him at previous visits. Mr. Webster replied, that Mr. Colman had testified that he learned nothing in relation to the club until this visit. Mr. Dexter, denied there being any such testimony. Mr. Colman’s evidence was then read from the notes of the judges, and several other persons, and Mr. Webster then proceeded)—My point is, to show that Phippen Knapp’s story is not true, is not consistent with itself. That taking it for granted, as he says, that he heard all that was said to Mr. Colman in both cells, by Joseph, and by Frank—and that Joseph did not state particularly where the club was deposited—and that he knew as much about the place of deposit of the club, as Mr. Colman knew—why then Mr. Colman must either have been miraculously informed respecting the club, or Phippen Knapp has not told you the whole truth. There is no reconciling this without supposing Mr. Colman has misrepresented, what took place in Joseph’s cell, as well as what took place in Frank’s cell.

Again. Phippen Knapp is directly contradicted by Mr. Wheatland. Mr. Wheatland tells the same story as coming from Phippen Knapp, as Mr. Colman now tells. Here there are two against one. Phippen Knapp says that Frank made no confessions, and that he said he had none to make. In this he is contradicted by Wheatland. He, Phippen Knapp, told Wheatland, that Mr. Colman did ask Frank some questions, and that Frank answered them. He told him also what these answers were. Wheatland does not recollect the questions or answers—but recollects his reply—which was, “Is not this premature?—I think this answer is sufficient to make Frank a principal.” Here Phippen Knapp opposes himself to Wheatland, as well as to Mr. Colman. Do you believe

Thippin Knapp against these two respectable witnesses—or them against him?

Is not Mr. Colman's testimony credible, natural, and proper? To judge of this, you must go back to that scene.

The murder had been committed—the two Knapps were now arrested—four persons were already in gaol supposed to be concerned in it—the Crowninshields and Selman and Chase—another person at the Eastward was supposed to be in the plot—it was important to learn the facts—to do this, some one of those suspected must be admitted to turn States' Witness—the contest was, *who should have this privilege?* It was understood that it was about to be offered to Palmer, then in Maine—there was no good reason why he should have the preference. Mr. Colman felt interested for the family of the Knapps, and particularly for Joseph. He was a young man who had hitherto sustained a fair standing in society—he was a husband. Mr. Colman was particularly intimate with his family. With these views he went to the prison. He believed that he might safely converse with the prisoner, because he thought confessions made to a clergyman were sacred, and that he could not be called upon to disclose them. He went, the first time, in the morning, and was requested to come again—He went again at 3 o'clock; and was requested to call again at 5 o'clock. In the mean time he saw the Father and Phippen, and they wished he would not go again, because it would be said the prisoners were making confession. He said he had engaged to go again at 5 o'clock; but would not if Phippen would excuse him to Joseph. Phippen engaged to do this, and to meet him at his office at 5 o'clock. Mr. Colman went to the office at the time, and waited;—but as Phippen was not there, he walked down street and saw him coming from the gaol. He met him, and while in conversation, near the Church, he saw Mrs. Beckford and Mrs. Knapp, going in a chaise towards the gaol. He hastened to meet them, as he thought it not proper for them to go in at that time. While conversing with them near the gaol, he received two distinct messages from Joseph, that he wished to see him. He thought it proper to go—he then went to Joseph's cell, and while there it was that the disclosures were made. Before Joseph had finished his statement, Phippen came to the door—he was soon after admitted—a short interval ensued, and they went together to the cell of Frank—Mr. Colman went in by invitation of Phippen—he had come directly from the cell of Joseph, where he had for the first time learned the incidents of the tragedy—He was incredulous as to some of the facts which he had learned—they were so different from his previous impressions. He was desirous of knowing whether he could place confidence in what Joseph had told him—he therefore put the questions to Frank, as he has testified before you, in answer to which Frank Knapp informed him,

1. "That the murder took place between 10 and 11 o'clock."
2. "That Richard Crowninshield was alone in the house."
3. "That he Frank Knapp went home afterwards."
4. "That the Club was deposited under the steps of the Howard street Meeting House—and under the part nearest the burying ground, in a rat hole, &c."
5. "That the dagger or daggers had been worked up at the Factory."

It is said that these five answers just fit the case—that they are just what was wanted, and neither more or less. True they are—but the reason is, because truth always fits—truth is always congruous, and agrees with itself. Every truth in the universe agrees with every other truth in the universe, whereas falsehoods not only disagree with truths, but usually quarrel among themselves. Surely Mr. Colman is influenced by no bias—no prejudice—he has no feelings to warp him—except now he is contradicted, he may feel an interest to be believed.

If you believe Mr. Colman, then the evidence is fairly in the case.

I shall now proceed on the ground that you do believe Mr. Colman.

When told that Joseph had determined to confess, the defendant said,—“it is hard, or unfair that Joseph should have the benefit of confessing, since the thing was done for his benefit.” What thing was done for his benefit? Does not this carry an implication of the guilt of the defendant? Does it not show that he had a knowledge of the object, and history of the murder?

The defendant said, “he told Joseph when he proposed it, that it was a silly business, and would get us into trouble.”—He knew, then, what this business was—he knew that Joseph proposed it, and that he agreed to it, else it could not get us into trouble—he understood its bearing, and its consequences. Thus much was said under circumstances, that make it clearly evidence against him, before there is any pretence of an inducement held out. And does not this prove him to have had a knowledge of the conspiracy?

He knew the daggers had been destroyed—and he knew who committed the murder. How could he have innocently known these facts? Why—if by Richard’s story, this shows him guilty of a knowledge of the murder, and of the conspiracy. More than all, he knew *when* the deed was done, and that *he* went home afterwards. This shows his participation in that deed—“went home afterwards”—home, *from what scene?*—home, *from what fact?*—home, *from what transaction?*—home, *from what place?* This confirms the supposition that the prisoner was in Brown street for the purposes ascribed to him. These questions were directly put, and directly answered. He does not intimate that he received the information from another. Now, if he knows the time, and went home afterwards, and does not excuse himself—is not this an admission that he had a hand in this murder? Already proved to be a conspirator, in the murder, he now confesses that he knew who did it, at what time it was done, was out of his own house, at the time, and went home afterwards. Is not this conclusive, if not explained? Then comes the Club. He told where it was. This is like possession of stolen goods. He is charged with the guilty knowledge of this concealment. He must *show*, not *say*, how he came by this knowledge. If a man be found with stolen goods, he must *prove* how he came by them. The place of deposit of the club was premeditated and selected—and he knew where it was.

Joseph Knapp was an accessory, and accessory only—he knew only what was told him. But the prisoner knew the particular spot in which the club might be found. This shows his knowledge something more than that of an accessory.

This presumption must be rebutted by evidence, or it stands strong against him. He has too much knowledge of this transaction, to have come innocently by it. It must stand against him until he explains it.

This testimony of Mr. Colman is represented as new matter—and therefore an attempt has been made to excite a prejudice against it. It is not so. How little is there in it after all that did not appear from other sources? It is mainly confirmatory. Compare what you learn from this confession, with what you before knew—

As to its being proposed by Joseph—was not that true?

As to Richard’s being alone, &c., in the house—was not that true?

As to the daggers—was not that true?

As to the time of the murder—was not that true?

As to his being out that night—was not that true?

As to his returning afterwards—was not that true?

As to the Club—was not that true?

So this information confirms what was known before—and fully confirms it.

One word, as to the interview between Mr. Colman and Phippen Knapp on the Turnpike. It is said that Mr. Colman’s conduct in this matter, is inconsistent with his testimony. There does not appear to me to be any inconsistency. He tells you that his object was to save Joseph,



and to hurt no one—and least of all the prisoner at the bar. He had, probably, told Mr. White, the substance of what he heard at the prison. He had probably told him that Frank *confirmed* what Joseph had *confessed*. He was unwilling to be the instrument of harm to Frank. He therefore, at the request of Phippen Knapp, wrote a note to Mr. White, requesting him to consider Joseph as authority for the information he had received. He tells you that this is the only thing he has to regret—as it may seem to be an evasion—as he doubts whether it was entirely correct. If it was an evasion, if it was a deviation, if it was an error—it was an error of mercy—an error of kindness—an error that proves he had no hostility to the prisoner at the bar. It does not in the least vary his testimony, or affect its correctness. Gentlemen, I look on the evidence of Mr. Colman as highly important, not as bringing into the cause new facts, but as confirming, in a very satisfactory manner, other evidence. It is incredible, that he can be false, and that he is seeking the prisoner's life, through false swearing. If he is true, it is incredible that the prisoner can be innocent.

Gentlemen, I have been through with the evidence in this case, and have endeavored to state it plainly and fairly, before you. I think there are conclusions to be drawn from it, which you cannot doubt. I think you cannot doubt, that there was a conspiracy formed for the purpose of committing this murder, and who the conspirators were.

That you cannot doubt, that the Crowninshields and the Knapps, were the parties in this conspiracy.

That you cannot doubt, that the prisoner at the bar knew that the murder was to be done on the night of the six'h of April.

That you cannot doubt, that the murderers of Capt. White were the suspicious persons seen in and about Brown street on that night.

That you cannot doubt, that Richard Crowninshield was the perpetrator of that crime.

That you cannot doubt, that the prisoner at the bar was in Brown street on that night.

If there, then it must be by agreement—to countenance, to aid the perpetrator. And if so, then he is guilty as PRINCIPAL.

Gentlemen—Your whole concern should be to do your duty, and leave consequences to take care of themselves. You will receive the law from the Court. Your verdict, it is true, may endanger the Prisoner's life; but then, it is to save other lives. If the prisoner's guilt has been shown and proved, beyond all reasonable doubt, you will convict him. If such reasonable doubts of guilt still remain, you will acquit him. You are the judges of the whole case. You owe a duty to the public, as well as to the prisoner at the bar. You cannot presume to be wiser than the law. Your duty is a plain, strait forward one. Doubtless, we would all judge him in mercy. Towards him, as an individual, the law inculcates no hostility;—but towards him, if proved to be a murderer, the law, and the oaths you have taken, and public justice, demand that you do your duty.

With consciences satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from— but the consciousness of duty disregarded.

A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning and dwell in the uttermost parts of the seas, duty performed, or duty violated, is still with us; for our happiness, or our misery. If we say the darkness shall cover us, in the darkness as in the light, our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close, and in that scene of inconceivable solemnity, which lies yet farther onward—we shall still find ourselves surrounded by the consciousness of duty, to pain us, wherever it has been violated, and to console us so far as God may have given us grace to perform it.

The Prisoner was then inquired of by the Court whether he had any thing further to add to the defence made by his Counsel, to which he replied, "I have nothing more to say."

Judge PUTNAM charged the Jury :—

GENTLEMEN OF THE JURY,

The Prisoner at the bar stands accused by the Grand Jury of this County of the crime of murder—as principal in the second degree. His Counsel contend that if the evidence proves the prisoner to be guilty of any offence, it is not the offence of a principal, but of an accessory before the fact. It becomes necessary to state to you the distinction between those crimes,—not on account of the punishment—for that is the same in both cases—but because the law requires that the offence shall be fully and plainly, substantially and formally described to the party accused—so that he may know how to avail himself of all legal advantages in his defence.

It has been said at the bar, and such is the law, that if a party is charged as an accessory, he cannot be put upon his trial before the conviction of the principal. And it has been urged by the counsel for the prisoner that the common law has been altered by the Statute of 1784, chap. 65—whereby those who before were principals in the second degree, are made accessories before the fact—and are entitled to all the privileges of accessories before the fact in the form and time of trial.

By the most antient common law as it was generally understood, those persons only were considered as principals in murder who actually killed the man—and those who were present aiding and abetting were considered as accessories.

So that if he who gave the mortal blow were not convicted, he who was *present* and aiding, being only an accessory, could not be put upon his trial.

But the law was otherwise settled in the reign of Henry IV. which commenced A. D. 1460.

And it was then adjudged that he who was *present aiding* and *abetting* him who actually killed, was to be considered as actually killing, as much as if he himself had given the deadly blow.

The law has been so understood from that time to the present, unless it has been altered by our Legislature by the Statute of 1784, chap. 65—as has been contended by the counsel for the prisoner.

By the first Section of that act it is provided, "that if any person shall aid, assist, abet, counsel, hire, command or procure any person to commit the crime of murder (or other crimes therein mentioned) he is and shall be considered as an accessory before the fact to the principal offender or offenders, and being thereof convicted shall suffer the like punishment as is by law assigned for the crime, for the commission of which he shall be so accessory." And it is urged for the prisoner that the distinction theretofore admitted to have existed, between persons *present*, and persons not present, aiding and abetting the commission of the felony, was done away.

So that all persons, whether present or absent, who should only aid and abet another, or others to commit murder or other felony, should be considered and taken to be accessories only, and have all the privileges of accessories—one of which was—not to be compelled to answer before the principal offender should have been convicted.

As this point is of great importance in this case, the Court have examined it with care, and after much deliberation, are of opinion that the Statute of 1784, chap. 65, was not intended to alter the Common Law as it then stood—but referred to persons aiding and abetting who were not present—who were then technically considered as accessories.

The title of the act indicates its object. It was "An act against accessories to crimes and felonious assaulters." It did not purport to make any new description of the persons, who should be considered as accessories, but to provide for the punishment of such offenders.

It is an established rule that a Statute is not to be construed so as to alter the Common Law, unless the intent to alter it is clearly expressed. No such intention can be reasonably inferred from the language of these statutes. The words of the Statute of 1784 describe accessories before and after the fact—and if it had been the intention of the Legislature to restore the old distinction as to accessories *at the fact*, it would have described such offenders, by apt words.

When technical words are used, they are to be understood in their technical sense and meaning, unless the contrary clearly appears.

The object of this Statute being to provide for the punishment of accessories, we must conclude that it related only to accessories in the legal sense at the time of the passage of the act—and not to those who were in the eye of the law then regarded as principals—so that, construing the Statute of 1784, chap. 65, by its own language, we do not think it can be understood as relating to persons *present* aiding and abetting in the commission of a felony.

And we think that the Statute of 1804, chap. 123, sec. 1, contains a legislative construction to the same effect. It provides that "if any person shall commit the crime of wilful murder, or shall be present aiding and abetting the commission of such crime—or not being present, shall have been accessory thereto before the fact, by counselling, hiring or otherwise procuring the same to be done, every such offender who in the Supreme Judicial Court shall be duly convicted of either of the felonies aforesaid shall suffer the punishment of death."

It seems to be very clear that this Statute regards persons *present* aiding, &c. as principals, for otherwise persons present, and persons absent, would not have been separately described—those who were absent being considered as accessories. So that if the former statute had been doubtful, the doubt would have been removed by the latter—especially when it is considered that all the Statutes upon the same subject are to be construed as one Statute.

We return to the consideration of the charge against the prisoner. He is indicted as a Principal in the murder of Joseph White.

He who actually perpetrates the murder is called a Principal in the first degree.

He who was *present*, aiding and abetting, is called a principal in the second degree.

Both are Principals in the murder. The blows given by one are considered as having been given by the other—just as if both had held and wielded the deadly weapon.

There is no evidence that the Prisoner gave the mortal blows with his own hand. But it is contended on the part of the government that he was *present* aiding and abetting the perpetrator at the time when the crime was committed.

We are therefore to consider what facts are necessary to be proved to constitute him, who is aiding and abetting, to be a principal in the murder—or (in other words,) what in the sense of the law is meant by being *present—aiding and abetting*.

It is laid down in Foster's crown law, 349, 350. Discourse 111. Sec. 4, that "when the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict, actual, immediate presence—such a presence as would make him an eye or an ear witness of what passeth. Several persons set out together or in small parties, upon one common design, be it murder or other felony, or for any purpose unlawful in itself—and each taketh the part assigned him—some to commit the fact—others to watch at *pro-*

per distances and stations to prevent a surprize, or favour if need be the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law present at it. For it was made a common cause with them—each man operated at his station at one and the same instant towards the same common end—and the part each man took tended to give countenance, encouragement and protection to the whole gang—and to insure the success of their common enterprize.”

Sec. 5. In order to render a person an accomplice, a principal in felony, he must be aiding and abetting at the fact—or ready to afford assistance if necessary.

So in 1. Hawk. P. C. 6th Ed. Ch. 32. Sec. 6. *Being present in judgment of the law, is equivalent to being actually present*—for says Hawkins (ubi sup.) “the hope of immediate assistance encourages and emboldens the murderer to commit the fact—which otherwise he would not have dared to do—and makes them guilty in the same degree [as principals] as if they had actually stood by, with their swords drawn ready to second the villany.”

These principles have been fully recognized by the very learned and distinguished Chief Justice of the Supreme Court of the United States—in the trial of Aaron Burr—4 Cra. 492.

The person charged as a principal in the second degree must be present—and he must be aiding and abetting the murder.

*But if the abettor at the time of the commission of the crime, were assenting to the murder—and in a situation where he might render some aid to the perpetrator—ready to give it if necessary—according to an appointment or agreement with him, for that purpose—he would in the judgment of the law, be present and aiding in the commission of the crime.*

It must therefore be proved that the abettor was in a situation in which he might render his assistance in some manner to the commission of the offence.

It must be proved that he was in such a situation, by agreement with the perpetrator of the crime—or with his previous knowledge, consenting to the crime—and for the purpose of rendering aid and encouragement in the commission of it.

It must also be proved that he was *actually aiding and abetting the perpetrator at the time of the murder* :—But if the abettor were assenting to the murder—and in a situation in which he might render any aid, by arrangement with the perpetrator, for the purpose of aiding and assisting him in the murder—then it would follow as a necessary legal inference, that he was *actually aiding and abetting at the commission of the crime.*

For the presence of the abettor under such circumstances, must encourage and embolden the perpetrator to do the deed, by giving him hopes of immediate assistance—and this would in law be considered as actually aiding and abetting him—although no further assistance should be given.

For it is clear that if a person is *present aiding and consenting* to a murder or other felony, that alone is sufficient to charge him as a principal in the crime. And we have seen that the presence by construction or judgment of the law, is in this respect equivalent to actual presence.

We do not however assent to the position which has been taken by the counsel for the Government, that if it should be proved that the Prisoner conspired with others to procure the murder to be committed,—that it follows as a legal presumption that the Prisoner aided in the actual perpetration of the crime, *unless he can show the contrary to the Jury.*

The fact of the conspiracy being proved against the Prisoner, is to be weighed as evidence in the case, having a tendency to prove that the Prisoner aided—but is not *in itself* to be taken as a legal presumption of his having aided, unless disproved by him. It is a question of evidence for the consideration of the Jury.

If however the Jury should be of opinion that the Prisoner was *one of the conspirators, and in a situation in which he might have given some aid to the perpetrator* at the time of the murder, then it would follow as a legal presumption that he was there to carry into effect the concerted crime, and it would be for the Prisoner to rebut that presumption by showing to the Jury that he was there for another purpose unconnected with the conspiracy. We are all of opinion that these are the principles of the law applicable to the case upon trial. And it will be for the Jury to ascertain the facts from the evidence, and upon the whole matter to pronounce their verdict.

I shall endeavor to call your attention to the most material parts of the evidence in as plain a manner as I can, without remarking upon all the facts which may have been introduced into the case. I refer to those generally, as being in your recollection. The Government must prove that Mr. White was murdered and that the Prisoner in the sense of the law was present, aiding and abetting, and so a principal in that crime.

In regard to the first point,—it will not be necessary for me to state the evidence particularly. I refer you to the testimony of the Physicians—and of others who saw and examined the dead and mangled body. There were no witnesses present at the time the murder was committed. It is not contended but that the testimony proves beyond any question, that the accused came to his death by the blows and stabs inflicted by one or more assassins. I shall not attempt to speak of that horrible deed as it has been spoken of by the learned counsel for the Government. There is no heart that does not respond to that impressive description.

The murder having been proved, the next question is if the Prisoner were, in the sense of the law as it has been explained and declared, *present aiding and abetting*. The Government contends, that the evidence proves that Richard Crowninshield, jr. was the perpetrator of the deed; so that the question is narrowed—and you are to consider if the Prisoner were present, aiding and assisting Richard Crowninshield, jr. to commit the murder?

It is not necessary to remind you to come to the consideration of this question, with minds free from prejudice. We have a right to consider you to be good men and true; that you will ascertain what facts are proved—and that you will draw all necessary inferences from those facts. This is a case of circumstantial evidence. But when clear, connected and satisfactory, it is as strong evidence as positive testimony. Sometimes it is more satisfactory than the positive evidence of a single witness,—for it is not so likely that a number of witnesses who establish the chain of circumstances would be perjured or mistaken, as that a single witness would be.

But the Jury will take care to examine all the links which constitute the chain,—and if any one of them shall be unsound, the whole chain will be affected and cannot be relied upon here. If such facts and circumstances are satisfactorily proved, as lead the mind to a reasonable conclusion of guilt, the Jury will come to that result. The question in such cases is,—whether the innocence of the party can reasonably be believed to exist consistently with the facts and circumstances which are proved in the case. The Government would satisfy you that a conspiracy was formed for the purpose of murdering Mr. White, by the prisoner, his brother Joseph, and the two Crowninshields:—and the acts and confessions of the co-conspirators, as well as of the prisoner, are offered in evidence against him. And the rule of the law is, that, as they who conspire together to commit a crime are partners in iniquity—when the conspiracy is established,—and the party upon trial is proved to be one of the conspirators, the confessions, declarations and acts of the co-conspirators, *in aid or concealment* of the criminal project, are considered as legal evidence against the party on trial, as if he himself had made them.

The first witness who was called to prove the conspiracy was Leighton, who swears to a most remarkable conversation between the prisoner and his brother Joseph. He seems to have heard just enough to prove the fact, and it seems not to be susceptible of much, if any explanation. But you saw, that his appearance and manner of testifying was somewhat extraordinary, and that he has not been consistent in regard to his knowledge upon this matter. You are the judges of the credibility of the witnesses who are permitted by the rules of the law to testify in the case. It does not appear that this witness had ever been impeached on account of his general bad character for truth. But if the facts and circumstances which he relates, were so unlikely to take place and so improbable as to induce you to doubt of their truth, you will not depend upon them. The contradictory statements he has made upon the matter will also be taken into your consideration. If however, you believe the conversation to have been as he swears it was, it goes very clearly to fix the conspiracy upon the prisoner, his brother Joseph, and Richard Crowninshield, jr. [States Leighton's testimony.]

It is for you to consider under what circumstances these words were uttered. Would a conversation of this nature have been delayed so long? They had been together for some hours before, walking about in the fields. This seems to be the beginning of a conversation upon that subject, which must have been uppermost in their minds. Would it have been so long deferred?

It is contended on the part of the Government that nothing which was said before or after, can take away the force of the words. They must refer to Capt. White and to Richard Crowninshield, jr., and to the thousand dollars. Consider the excuse which the witness offers for his contradictory statements. "He was frightened, and could not recollect any thing about it." This was most extraordinary conduct. But it is contended for the prisoner that one part of the story cannot be true—that he heard their conversation when they were twenty-five rods off. You must judge whether the witness was mistaken merely in regard to the distance. But he swears that he was within a few feet when they had the conversation which is so material in this case. In that he cannot be mistaken. If he speaks the truth he was near enough to hear distinctly what they said. If they did not speak the words, the witness must be corrupt or perjured. But what motive is there to induce him to give this evidence if it be not true? If he has been bribed, who bribed him? He has been in the employment of the brother of the prisoner, and still remains upon the farm.

The next witness is Palmer, who from his own account and the other evidence is probably one of the most corrupt of men. He has been convicted in Maine of an infamous crime, and would be an incompetent witness in that State. But his conviction there does not render him incompetent here. He is a legal witness, whose credibility is to be weighed by the Jury. [States his evidence.] This story seems hardly credible, and would be disregarded if it were not confirmed by other evidence in the case. The murder has been committed. It is proved that Mr. White was at his farm with an horse wagon and returned in it alone, at the time that Palmer swears it was proposed to upset him and kill him. The house keeper was to be absent. It is proved that she was absent at the time of the murder. It does not follow, that because a man is of infamous character, he *cannot* speak the truth. If his testimony is corroborated by other facts proved, it may be believed, notwithstanding it comes from an infamous source. There is evidence, that the Prisoner said, that the thing was done for Joseph's benefit. You will judge whether that statement does not strongly support the testimony of Palmer. The frequent visits of the prisoner to the Crowninshields are of the same tendency. Do you believe he went there for social intercourse, or that he was there, procuring the murder to be committed. The decla-

ration which Mr. Colman swears the prisoner made, that the thing was done for Joseph's benefit, is urged as strong proof of the conspiracy, and that the prisoner was one of the conspirators. The prisoner said, "I told Joseph, when he proposed it, that it was a silly business, and would only get us into difficulty." To what thing did the prisoner refer unless to the proposal to murder Mr. White. Before he made that statement, that subject had been distinctly presented to his mind. He was informed that Joseph had determined to make a confession, and wanted the prisoner's consent. They both knew to what subject that confession was to relate. And it is to be recollected that this declaration was before any suggestion had been made to the prisoner of any benefit or favor from any course which the prisoner might pursue.

There are various other circumstances proved in the case, tending to establish the points now under consideration, to which I would refer you without particularly stating them.

If you believe that such a conspiracy was formed, and that the prisoner was one of the conspirators, then the declarations and acts of the co-conspirators, as well as those of the prisoner, and the testimony of the other witnesses, are to be taken into consideration, to ascertain the part which the prisoner took in the execution of that most wicked project. The extraordinary letter from Palmer to Joseph Knapp may be considered as a declaration made by him to the latter, and the proceedings of the latter to ward off the ill effects which it threatened, are to be weighed in the case. This is a threatening letter from a stranger calling for money. [Refers to it.] How could Palmer have known the particulars which are stated in his letter unless from the Crowninshields? The letters which Joseph sent; one to the Committee of Vigilance and the other to the distinguished relation of the deceased, "to nip the affair in the bud," are to be considered as evidence in the case against the prisoner, if you believe that he and his brother Joseph were co-conspirators. Palmer does not *state* the part which each was to take. It was to be done in the absence of Mrs. Beckford. But he does not say by whose hand. Then it is to be ascertained what part did the prisoner take? Was it simply to hire Richard Crowninshield, jr. to do the deed, or did he agree to be near the scene at the time, to be ready to aid or assist if assistance were necessary?

If not, then he had no more to do with it than his brother Joseph, and he cannot be convicted upon this indictment. God forbid that any man should suffer unless he is proved to be guilty in manner and form as his offence is charged against him. If he merely hired Richard Crowninshield, jr. to perpetrate the murder, and did not go near to the place upon an agreement to aid him in the perpetration, having some means or power to aid, then he was an accessory before the fact, and not a principal in the crime.

This leads you to the question—Was he present, and if so, with what intent?

The Government contend upon the evidence that the prisoner was in Brown street at the time that the murder was committed; viz. at about half past 10 o'clock, and that he had been near to that part of Brown street which opens into Howard street, for some hours before, on that evening. They contend that he was either at the corner of Brown and Newbury streets, or in Howard street, or in Brown street, a little to the westward of Howard street, from about half past 8 o'clock, until the perpetrator met him in Brown street after the murder, between half past 10 and 11 o'clock, when, after a short interview they separated. [States the evidence given by Mirick, Webster, Southwick, and Bray.]

Upon the point now under consideration the jury should recollect the difficulty of identifying persons, especially in the evening. It was for the Government to prove the fact of *presence*. It is but fair that the prisoner should have the advantage arising from the difficulty of proving in the night time, that he was in the places where they contend he was seen.

by these witnesses. The state of the weather and atmosphere is however to be considered; some witnesses, Mr. Chadwick, and Mr. Saltonstall speak of it. The moon was obscured by passing clouds, yet it was so light that Mr. Chadwick recognized the two Messrs. Saltonstalls about three rods off, and Mr. Saltonstall thinks persons of your acquaintance could be seen and known at considerable distance. Consider also the opportunity which the witnesses had of knowing the prisoner. They did not hear him speak, but Mr. Webster says he knew him well and passed him within 6 or 8 feet, that he thought at the time it was the prisoner, judging from his walk and appearance. He thinks now that it was the prisoner, but will not swear positively to the fact.

But the dress of the person described by Mirick and Bray, is not like that worn by the person seen by Webster, or Southwick. Mirick and Bray describe him as wearing a dark frock coat and glazed cap, corresponding with the dress usually worn by the prisoner. Webster says he had a cloak or wrapper on, and Southwick says that the prisoner had a cloak on, when he was in Brown street on the steps of the rope walk.

The Government suggest that the prisoner could easily change his apparel, for the purpose of disguising his person, when engaged in such a criminal design.

Mr. Southwick speaks of the identity of the prisoner with considerable confidence. But there is a fact proved in the case which has a strong tendency to impair the weight of his testimony. He was a witness before the Grand Jury at the last term of this Court, when there was an inquiry as to the supposed guilt of Mr. Selman, and Mr. Southwick stated that the person whom he saw upon the steps was about the size of Selman. That might be so. But the witness knew as much about the matter then as he does now, and did not state to the Grand Jury that it was Frank Knapp, who was on the steps. His evidence then had a tendency to prove that it was Selman whom he saw on the steps. You will judge whether this ought not somewhat to detract from the testimony which he has now given. If he then thought it was the prisoner, how could he as an honest witness leave the impression on the Grand Jury, that it was Selman. If his testimony on this trial were not confirmed by the declaration that he made at the time to his wife that it was the prisoner whom he saw on the steps, the Jury probably would not be disposed greatly to rely upon it. But she states, that he did tell her when he came into the house on that evening that "it was Frank Knapp."

It has been contended in behalf of the prisoner that the testimony of Mr. Bray is so much stronger upon this than upon the former trial, as to be considered contradictory. The appearance of the witness, and his manner are to be considered by the Jury. He states now that he has no doubt but that it was the prisoner whom he saw, and he did not say so before; but it should be recollected that the question was not put to him before. He does not now undertake to swear positively as to his identity. He says he has reflected upon the subject since his former evidence, and he gives you the reasons which have induced him to form the opinion which he has expressed.

But the Counsel for the prisoner contend that all these witnesses who are called to prove that he was in Brown street, must be mistaken, because (as they say,) the prisoner, was in another place, and they refer you to the testimony of four young gentlemen, viz:—Messrs. Balch, Burchmore, Forrester, and Page, as well as to Mr. Knapp sen., and Samuel and Phippen Knapp, to prove the alibi. [States their evidence.]

The time embraced by the four first witnesses is from about 7 until near 10, and by the three last, from at five minutes after 10, until he went to bed; and if they are not mistaken in the night, and the father and his sons who have testified are not mistaken in regard to the facts of which they speak, the alibi would seem to be proved.

The burthen of proof is upon the party who would establish the



alibi. You must determine whether it was on the evening of the murder that these young men were with the prisoner—or on some other evening near that time. There is one fact mentioned by Balch, upon which the Government much rely, to show that it was not on the 6th, which was the night of the murder, but on the 3d, the Saturday night before. He stated, that the prisoner told them that he was going to ride out of town on horseback, and was going to Osborn's to get his horse. And when he came back he said he had been out of town, and that it was "about a twenty minutes ride." There is a charge for a ride on horseback on the 3d—but none on the 6th. I would refer you to the testimony of the young men, and particularly to their cross-examination, and have the whole to be weighed by you.

In regard to the testimony of the father—can you doubt that he is mistaken? I refer you to the testimony of Mr. Shepard, and of Mr. Treadwell upon this point. He stated to them that he did not know at what hour Frank came home on that night. He spoke to Mr. Shepard, not of his own knowledge—but of what "Phippen had told him." Does he now know more about it, than he did when he had the conversation with those gentlemen? You must consider the testimony of Samuel Knapp in connexion with the contradictory evidence given by Mr. Webb; and the testimony of Phippen Knapp in connexion with the contradictory evidence in the case, to which I will not now more particularly refer you.

The confession of the prisoner is to be received or rejected according to the opinion you may form upon this question: viz. whether the prisoner did assent to his brother Jo's becoming a State's witness, before he made the confession? If he did, then it is the opinion of the Court that the evidence of his confessions should be rejected. If he did not, then the confessions are evidence to be weighed in connexion with the circumstances under which they were made.

The Rev. Mr. Colman states that there was *neither assent nor refusal*. If there were no assent, the confessions are evidence. If you believe Mr. Phippen Knapp, his brother Frank did assent to Jo's becoming a witness for the State, before he made his confessions—and then, they are to be excluded from your consideration. Then which of them will you believe? You know the relations in which they stand respectively to the prisoner.

You need not any advice from the Court in regard to the motives which may be supposed to influence them. While I am stating this point, I have no doubt but that the spontaneous suggestions of your own minds are leading you to a correct result upon it. I would remind you that Mr. Colman is contradicted by Mr. Phippen Knapp—but that the latter witness is contradicted materially by Mr. Wheatland as well as by Mr. Colman.

If you believe Mr. Colman, there is evidence from the prisoner himself, that he was not at home at the time of the murder, but *went home afterwards*. That he knew who was the perpetrator—the weapons which he used—the particular place of concealment of one and destruction of the other, and the time when the deed was done—Did the prisoner bear a part in it? Could he know these circumstances without having his knowledge from the perpetrator? Did they come into town upon that evening each to perform the part which had been assigned to him? From whom could the prisoner have been informed before he went home on the night of the murder, that it had been committed? The Jury will compare the evidence arising from the confessions of the prisoner (if they are admitted under the rule before stated) with the other testimony in the case, and determine whether he was in Brown street as the government contend that he was—and if so, with what intent he was there? It has been contended on the part of the prisoner, that if he were there, he was not in a situation in which he could render any aid or assistance to the

perpetrator at the time of the murder. This is a matter of fact for the Jury.

It is proved that the part of the house occupied by the deceased as his sleeping chamber could be distinctly seen from Brown street, and the distance of Brown street from the house of the deceased, and the means of communication with it by the streets or otherwise, have been stated by the witnesses. The Jury must judge upon the evidence if the prisoner was there performing his part according to an agreement with the perpetrator, ready to afford him assistance if necessary—by watching—giving notice in any way of the approach of danger, or assisting in the escape, or rendering any aid or assistance which would strengthen the arm and heart of the perpetrator.

The Jury will ascertain and apply the facts in the case to the principles of the law as they have been stated. [Recapitulating them.]

You must remember gentlemen that all the presumptions of innocence surround the prisoner, until they are removed by the evidence of his guilt.

You must decide upon the evidence as you have heard it within these walls—you will shut out from your minds every thing you may have heretofore read or heard upon this subject—recollecting that all reasonable doubts upon any matter incumbent upon the government to prove, are to weigh in favour of the prisoner—with these remarks I leave the prisoner with his Country and his God.

The cause was committed to the Jury at one o'clock, P. M. on Friday, August 20, and at 6 o'clock they returned a verdict of GUILTY.

On Saturday morning the prisoner was placed at the bar, and the Attorney General addressed the Court as follows:—

*“May it please your Honors :*

“John Francis Knapp has been indicted by the Grand Jurors of the county of Essex, as principal in the second degree in the murder of Joseph White—upon that indictment he has been arraigned and pleaded not guilty—a jury of his own selection has been empanelled and sworn to try the issue between him and the Commonwealth—able and learned Counsel have been assigned him by the Court at his request—and the jury, after an attentive hearing of all the evidence and the arguments of Counsel, have returned a verdict of GUILTY. The punishment which the Law requires is Death.

“I therefore move your Honors, that sentence of Death, conformably to the Law, be now pronounced against the prisoner, as a just retribution for his crime.”

Judge PUTNAM then inquired of the prisoner if he had aught to say why sentence of Death should not now be pronounced against him:—

He replied, “I have only to say, that I am innocent of the charge alleged against me.”

Judge PUTNAM then addressed him as follows :

“JOHN FRANCIS KNAPP,

You have been indicted for the crime of Murder—and upon your arraignment have pleaded that you were not guilty—and put yourself upon God and your Country for trial. Able and learned Counsel have been at your request assigned by the Court to assist you in your defence. Your case has been committed to a very intelligent and impartial jury, selected by yourself, who have for six days patiently and attentively listened to the evidence and the arguments. All that learning and industry, fidelity and talents, could suggest, has been urged in vain in your defence. The truth has prevailed—and the jury of your country have established your guilt—the Court is satisfied with their verdict, and you come now to receive the Sentence of the Law.

Before we proceed to that last and painful duty, we are desirous of doing you all the good in our power, by awakening your mind to a consideration of the awful doom which awaits you. Would to God that any thing we could say would have the effect of softening your heart, and of leading you to sincere contrition and repentance.

The horrible murder of which you have been convicted, stands in bold relief and deformity in the history of crime.

The victim of your ferocity, in a few years, according to the course of nature, would have sunk into his grave in peace, but for the thirst for gain which corroded the hearts of those who conspired against his life. He was living in the midst of as peaceful a community as exists upon the earth, surrounded by his relations and friends, upon whom he had lavished his bounty. In the stillness of the night—while he rested his aged limbs upon the bed—while he was in the arms of sleep—in his own house—in the centre of this populous town—the assassin of your procurement committed the deed of death, while you, in the judgment of the Law, were present and aiding him in the fact.

The circumstances attending the conspiracy, exhibit a cool, deliberate design to take the life of the victim, merely for the sake of gain. There was no other passion to be gratified.

The conspirators were all young. They were connected with respectable families. They were born and reared and educated among us. They had the means of living within their own control, if they had pursued the course of honesty and industry.

But they forsook this course, and resolved to cut their road to fortune through blood and murder.

Our peaceful city stood aghast at this dreadful deed. The very foundation of our society seemed to be shaken—and the shock was not confined to this vicinity or State, but extended throughout this land.

Suspicious too horrible for utterance were excited in the breasts of reflecting men. The sense of security which the Law inspires, was in a great measure lost. No man's house was considered a safe castle—and men seemed for a time disposed to trust to their own arms, rather than to the protection of the Law, for their safety.

But there is a Providential watch constantly over us. The murderers have been detected by means as extraordinary as their crime was atrocious. The assassin has perished by his own hands—and the tremendous punishment for your crime is about to fall upon you.

But there is in these awful events a WARNING VOICE, which speaks to all, and especially to the young, as with the sound of the Earthquake, in every breeze which wafts the news of this horrid tragedy—"Forsake not the ways of truth, and honest industry, which lead to honor and everlasting life, for the paths of vice and profligacy which lead to ignominy and death."

"Be not deceived by their enticing appearances. At their beginning, the rose buds of hope and passion may appear, but they end in anguish, poverty and destruction."

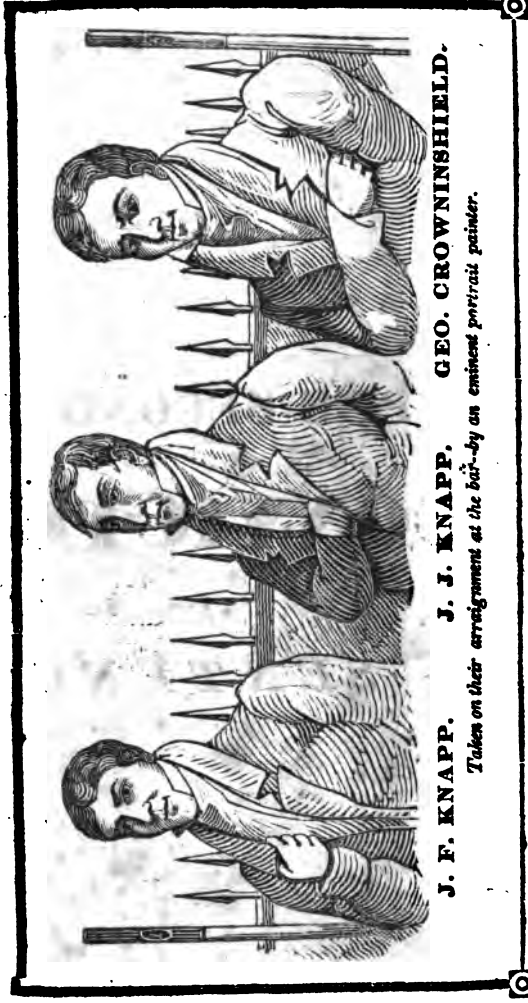
Our fervent prayer for you is, that you may be prepared, by sincere repentance, to appear before the Judge of all the earth. And we would urge you to apply to those pious men whose duty it is to teach our Holy Religion, to help you with their prayers and instructions during the few remaining days which may be allowed to you; and may God grant success to their endeavors.

It only remains for us to declare the sentence of the Law—which is, and this Court doth accordingly adjudge,

That you be carried from hence to the prison from whence you came—and from thence to the place of execution—and there be hanged by the neck until you shall be dead. And may God of his infinite grace have mercy upon your soul.

The prisoner was remanded, as soon as the sentence was pronounced, and the Court was adjourned *sine die*.

**KNAPP'S SECOND TRIAL,  
CONVICTION,  
AND  
SENTENCE.**



**J. F. KNAPP.**

**J. J. KNAPP.**

**GEO. CROWNINSHIELD.**

*Taken on their arraignment at the bar—by an eminent portrait painter.*

4

THE SECOND  
TRIAL AND CONVICTION  
OF  
**JOHN FRANCIS KNAPP**  
FOR THE  
**MURDER**



OF  
**JOSEPH WHITE, ESQ.**  
OF  
**S A L E M,**

ON THE SIXTH OF APRIL 1830.

---

**BOSTON:**  
PUBLISHED BY CHARLES ELLMS,  
CORNER OF COURT ST. AND CORNHILL.  
1830.



## SUPREME JUDICIAL COURT.

ESSEX, JULY, 1830.

IN pursuance of an act passed at the last session of the Legislature of Massachusetts, the S. J. Court convened at Salem in and for the County of Essex, on the 3d Tuesday in July, in the year of our Lord one thousand eight hundred and thirty.

The court met at a quarter past 11 o'clock, on Tuesday morning.

PRESENT,—His Honor the Chief Justice, and Putnam, Wilde, and Morton, Associate Justices. The court having been opened in the usual manner, the Clerk proceeded to call the names of the Grand Jurors returned by the Sheriff in and for the county of Essex.

CHIEF JUSTICE PARKER then delivered to the Jurors the following

### CHARGE.

GENTLEMEN OF THE GRAND JURY,—

THIS Court is convened, out of its ordinary season, in virtue of a special appointment of the Legislature made at its last session. You have been summoned here by the same authority, and having had the oath administered to you, which is prescribed by law to qualify you to act in the capacity of Grand Jurors, you now have become the Grand Inquest of the Commonwealth for the body of the county of Essex, with all the power and duties which pertain to that body, when attending the ordinary session of this Court, in relation to such cases as come within the provision of the Statute above referred to. The jurisdiction given to the Court by this act of the Legislature, extends to all crimes and misdemeanors, which may have been committed within the body of this county, before the passing this act; such as may have occurred *since* that time, are to be left to the usual administration of justice, at the succeeding regular terms of the Court. Notwithstanding the general terms, in which the jurisdiction of the Court is given, comprehending all crimes and misdemeanors, there is reason to believe that the chief purpose of the Legislature in establishing this term, was, that judicial inquiry should be made into a transaction of the most afflictive nature, which took place in this town some months since. This transaction was of a nature to excite alarm and agitation, not only in the vicinity where it happened, but throughout the Commonwealth, and even beyond it. An aged and respectable citizen, living in the centre of this populous town, so long remarkable for its tranquility, peace and



order,—he being surrounded by all those circumstances which usually give security to the property and person, has been assassinated in his bed,—probably in the depth of sleep; his skull fractured by a blow from some heavy weapon, his body pierced with many wounds; and this was done with such secrecy that not a trace for a long time appeared to be left, by which the perpetrator of so horrid a deed could be discovered,—no wonder that the shock felt here was so great; it has vibrated through the community. Murder is under all circumstances an appalling crime,—it exhibits in the perpetrator the deepest stain of depravity of which human nature is capable; but when in the stillness of night, during the hour of repose, the assassin invades the quiet mansion, steals into the chamber of sleep, and changes that sleep into death, by one fell blow,—and, as if insatiate of blood, seeks the heart of the victim which had already ceased to beat,—there is no stoicism, no philosophy, hardly any religion, which can repress those feelings of terror, those expressions of horror, which such a tragedy is calculated to produce. I speak thus of the crime because it is notorious; we all feel alike about it, nor is there any occasion to suppress the feelings, but they must be regulated and kept within just bounds.

You are convened here, not so much to inquire if a crime has been committed,—though even that must be proved to you by legal evidence,—as to seek out the perpetrators and present them, if discovered, to the bar of this Court for trial. It is the duty of the Court to warn you against suffering your indignation for the crime, to affect your inquiries for the offenders;—the popular voice justly cries out for vengeance, but it is only upon the guilty it ought to fall;—there is danger in all great excitements that the mind may be thrown off its balance, that the process of inquiry may be too rapid to be sure, that the suspected may readily be believed to be guilty, that prepossession may supercede proof;—how apt are we all upon hearing of the commission of some great crime, to listen greedily to every circumstance, which has a tendency to fix the guilt upon some individual, to shut our ears against exculpatory facts, and to pass sentence of condemnation, before any hearing, and without any trial. This is a state of mind which disables us from acting impartially in the office of Judge or Juror. We are to stand indifferent between the Commonwealth and the party accused, even to presume that he is innocent, until we have proof that he is not. We are to sift and weigh all the facts produced in proof, with a hope that they may all be consistent with his innocence.

A Grand Jury especially, who by the very nature of their duty are prevented from hearing the accused or any evidence in his favor, except what may be drawn from the witnesses produced against him, should be cautious not to act hastily, or upon slight evidence. They ought to be satisfied before they agree upon a

presentment, that the evidence as it *appears before them* is sufficient to convict him of the imputed crime, for if it should not be sufficient under these circumstances, what probability is there of a conviction when the party shall be put upon his full defence, with the privilege of adducing counter evidence in his favor, and of counsel to enforce it; and no citizen ought to be exposed to the anxiety and ignominy of accusation for a capital offence, if there be no probable proof of his guilt.

It is a most happy characteristic of our system of criminal justice, that it requires deliberation and patient investigations, let those who complain of the slowness of its pace, consider that it is formed for the *protection of innocence*, as well as for the punishment of guilt,—and that more rapid movements might involve in ruin, those who might afterwards be found not to have deserved it. Occasions like the present, sometimes arise, when a just indignation at some enormous crime, pervades the whole community; and the officers of justice are loudly called upon by the public voice, to hasten to the exercise of their functions, and to purify the land of the blood with which it has been stained, by an early condemnation of the supposed perpetrator. But the law moves not from its course. it gives time for deliberation,—for the return of sober thought, which has been suspended by agitation and excitement;—it calls for proofs, it gives reasonable opportunity for defence, it proceeds warily and cautiously, and decides only when it may be presumed there is little room to doubt the rectitude of its decision;—and this is all which can be attained by human tribunals, for fallibility is stamped upon every thing human;—under the guidance however, of a wise providence, and with a due observance of legal formalities and rules, we may trust ourselves even with the lives of our fellow beings; for the law has committed them to our charge, and if we severally discharge our duty with honest hearts, and with the use of all the light bestowed upon us, we shall stand approved to our consciences and to the great and just Judge, whose ministers and servants we are.

There is more than common cause for recommending the exertion of your powers to throw off all preconceived opinions, and to bring your faculties to the examination of the evidence which will be submitted to you, with entire self-collectedness and impartiality. The extraordinary character of the crime has seized upon all imaginations, preoccupied many judgments. An unusual publicity has been given to such discoveries and disclosures, as have from time to time been made. The self-execution of one who has been supposed the immediate agent of the cruel deed, has given additional force to opinions, which before perhaps, were strongly conceived.

Gentlemen, it is on such great occasions that superior wisdom is called for. In the ordinary course of crime, the machinery of justice will march steadily and regularly, with only its customary

superintendence. But, when greater and astonishing events occur, which call for judicial investigation, when the public mind is agitated and distracted, and the popular voice is audibly crying for vengeance, it is then that those who are clothed in the robes of magistracy, or who otherwise become functionaries of the law are to divest themselves of human passions, to elevate themselves above the dense atmosphere which surrounds them, and imitate in their humble measure, the wisdom and impartiality of the *god* of Justice.

Gentlemen, we cannot but regret the unusual publicity, that has been given to the facts and circumstances which have transpired on this mournful subject. We shall see, I fear, that it will have had a tendency to impede the course of inquiry,—but we trust you, who represent the country, in the first stage of this solemn proceeding, will assume the attitude of impartial judges of the evidence, that you will diligently inquire and true presentment make, that you will be influenced neither by prejudice nor favor, that you will present things as they come to your knowledge, according to the best of your ability and understanding.

It is not necessary upon the present occasion to discuss the various classes of homicide, in order to distinguish between that which is justifiable, as in self-defence—that which is the effect of sudden provocation, which may be manslaughter, and that which is the effect of malice aforethought, which is murder. . . If it should turn out in evidence, that the house of the deceased was entered in the night time, that he was slaughtered in his bed, whether the object of the perpetrator was plunder, revenge, or hope of reward from others, who may have incited the deed, it is murder of the deepest die, in regard to those, who may have given the death wound and any *who may have been present*, aiding and abetting the crime.

Such is the common law, and such is the provision of the Statute of this Commonwealth, which enacts “that if any person shall commit the crime of wilful murder, or shall be present aiding and abetting in the commission of such crime, or not being present, shall have been accessory thereto before the fact, by counselling, hiring, or otherwise procuring the same to be done, every such offender, who in the Supreme Judicial Court shall be duly convicted of either of the felonies aforesaid, shall suffer the punishment of death.”

It may be a subject of inquiry, what constitutes presence, within the meaning of the several provisions of this enactment, “present, aiding and abetting, in the commission of such crime;” and the construction of this phrase, which is taken from the common law, has been settled in ancient times, by wise and learned sages of the law, and their construction adopted and sanctioned, by successive Judicial decisions, down to the time of the adoption of our Constitution; so that the Legislature that enacted this statute

without doubt, referred to this construction, when they framed it. By this construction, it is not required, that the abettor shall be upon the spot, when the murder is committed, or even in sight of the more immediate perpetrator, or of the victim to make him a principal. If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, *having knowledge of the purpose, and object of the assassin*, this in the eye of the law, is being present, aiding, and abetting, so as to make him a principal in the murder.

The distinction between a person thus situated, and one who is denominated by statute, an accessory before the fact, is, that the latter is, not only in every sense, absent from the scene of crime, but is not an immediate participator in it. He may not know the time when, and place where it is committed, he has previously, perhaps days, or a month before, hired, counselled, or procured the deed to be done, but he has no immediate agency in the deed. His crime is deemed by the law, to be as great, as his who strikes the blow; it is oftentimes in a moral point of view, greater as it may combine a greater number of desperate and diabolical motives, without the influence of which, the crime could never have been committed; it denotes the savage heart of the murderer, without his bold and daring hand; it puts in peril, his own soul, and the souls of others, who but for him, might have gone free from the guilt of blood.

Thus, the law, punishes the accessory before the fact, in the same manner, as it punishes the actual perpetrator; they are alike murderers. There is in the common law a difference, and it is supposed to exist under our statute, in regard to the form, and the time of the trial, between those who are called principals and accessories before the fact, it being held that unless there be a conviction of a principal, there can be no trial of the accessory—this difference, if it exists, is a relic of the unwise refinement of ancient times, there being no good reason, why an accessory before the fact, to a crime proved to have been committed, should not be tried and punished, although the principal may have escaped by death, or otherwise, the punishment which awaited his crime in this world. But, if occasion should arise to examine this point, and the common law should not be found to have been varied by our statute, the Legislature will probably afford a remedy for future cases.

I have thus Gentlemen, I believe, discharged all the duty of the court, in this stage of its proceedings, in regard the principal subject which will require your attention. If before the passing the act under which we are assembled, other offences cognizable in this court, shall have been committed, and not yet have been before a Grand Jury; you are authorized, but not required, by the statute, to enquire into, and present them. In regard to such cases, as well as to any question of law, which may arise upon

subject, on which I have given you the charge, you will have the advice and assistance, of able and experienced officers of the Government, whose duty it is to facilitate your investigations, and to reduce the result to such form of presentment, as the nature of each case may require. Gentlemen, your duty, and ours, may be arduous and embarrassing, that it may be discharged with clear understanding, and firm hearts, let us look to the Disposer of all light and wisdom, for his blessing upon our endeavors.

"Murder, most foul, as at best it is,  
But in this most foul, strange and unnatural."

**JOHN FRANCIS KNAPP.** One of the supposed conspirators and principal in the murder of Capt. Joseph White on the 6th of April last, has already once been tried before the S. J. Court holden at Salem at its special term in July; the Jury not agreeing, a new trial has been had. The Prisoner was again arraigned on Saturday the 14th of August; great exertion was made on the part of the prisoners counsel to postpone farther proceeding until the November term. The cause alledged was the absence of a brother of the prisoner, Saml. H. Knapp, whose testimony was stated to be important, and affidavits were filed by prisoners counsel, stating that said Knapp would prove that the prisoner was at home on the night of the 6th, and in his chamber present with the said S. H. Knapp. The affidavit was admitted by the court. The Court over-ruled the motion for a continuance and assigned Saturday 14th at 9 o'clock for a re-hearing of the case.

SUPREME JUDICIAL COURT, August 14th, 1830.

The court met according to adjournment.

Present—

HON. SAML. PUTNAM, *Seignor Justice.*  
HON. S. S. WILDE,  
HON. MARCUS MORTON.

*Counsel for Government.*

HON. PEREZ MORTON, *Att'y Gen'l.*

" DANIEL DAVIS, *Solic'r. Gen'l.*

" DANIEL WEBSTER. *Spee'l Counsel.*

F. Dexter and W. H. Gardiner, Esqs. of Boston, were assigned on the former trial as Counsel for the prisoner.

The Clerk proceeded to call the Jury. As the Jurors were called; the prisoner made twelve peremptory challenges, and sixteen for cause.

The following gentlemen were selected and sworn to try the issue, viz :

SAMUEL N. BAKER,	of Ipswich, <i>Foreman.</i>
ORLANDO ABBOTT,	TIMOTHY APPLETON,
STEPHEN BAILEY,	JACOB BROWN,
WM. D. S. CHASE,	STEPHEN CALDWELL,
PHINEAS ELLIOT,	JOHN LADD,
THOMAS MERRILL,	AMOS SHELDON,
MOSES TOWNE.	

\*The clerk then read the Indictment containing the following counts, viz'

This indictment charged, that on the 6th of April last, J. Francis Knapp committed the murder, by giving the deceased a mortal blow on the head with a bludgeon, and that on the 2d of April, Joseph J. Knapp and G. Crowninshield, hired and procured the felony to be done:—

Also, that J. Francis Knapp gave the deceased several mortal wounds in the side, with a dirk, and that Joseph J. Knapp and G. Crowninshield hired and procured it to be done:—

Also, that Richard Crowninshield, Jr. gave a mortal blow with a bludgeon, and that J. Francis Knapp was present aiding and abetting; that Richard Crowninshield, Jr. on the 15th of June committed suicide, so that he cannot now be proceeded against, and that J. J. Knapp and G. Crowninshield hired and procured R. Crowninshield, Jr. and J. F. Knapp to commit the felony:—

Also, that R. Crowninshield, Jr. gave several mortal wounds with a dirk, and that J. F. Knapp was present aiding and abetting; that R. Crowninshield committed suicide, &c.; and Joseph J. Knapp and G. Crowninshield hired and procured, &c.—

Also, that a person to the jurors unknown gave a mortal wound with a bludgeon, and that J. F. Knapp was present aiding and abetting; and that Joseph J. Knapp and G. Crowninshield hired and procured such persons unknown, and J. F. Knapp to commit the felony:—

Also, that a person to the jurors unknown gave several mortal wounds with a dirk, and that J. F. Knapp, was present aiding and abetting, and that Joseph J. Knapp and G. Crowninshield hired and procured, &c.—

**J. F. KNAPP, plead NOT GUILTY to this Indictment,**

The Attorney General then announced as stated before, that the Hon. D. Webster had been retained in the case, and by the permission of the court, would make the closing argument on the part of the Government.

After which the Attorney General for the Government addressed the Court and Jury as follows:—

May it please your Honors, and you Gentlemen of the Jury: All who are to take a part in this interesting occasion, have a painful duty to perform. To see a young man in the vigor of his days, brought to the bar of his country, to answer for a crime that implicates his life, however guilty he may appear, will necessarily create feelings of regret, if not of compassion, in every beholder of the spectacle. But we ought not to forget, that a faithful discharge of our respective duties, is paramount

to every other consideration. Public justice, as well as public safety, require it at our hands; and so far as my duty requires, I will endeavor to discharge it with fidelity: and so far as yours, I feel confident that it will be discharged with candor, frankness, and impartiality.

The charge against the prisoner at the bar, is, for the murder of the late Joseph White; a murder of no ordinary character,—a murder the most cold blooded, unprovoked, and atrocious, that has ever stained the annals of our Commonwealth, if not of any other country;—a murder, the commission of which, every personal security and safety, which the law especially guarantees to the citizen, in the asylum of his dwelling house, and in the recess of his bed-chamber, has been outraged and violated. It is not to be wondered at, that such a crime produced uncommon excitement among the citizens of this place; for, who of them could have felt himself safe in retiring to rest, unless the authors of this abominable murder, were detected and punished:—and it affords great satisfaction, and much credit is due to the Committee of Vigilance: there is, however, one cause of blame attached to their laudable efforts; that is, their having suffered so much of their proceedings to be made public:—nothing can be more improper and injurious to the cause of public justice, than Editorial remarks, or relation of facts, upon untried crimes. It may be some apology for the committee, that the public mind had become so anxious, and so full of inquietude that it was nearly impossible to withhold most of the various facts, which their investigation had furnished.

The perpetrators of this most atrocious murder, remained for a long time veiled in darkness and mystery; notwithstanding the efforts to detect them, the circumstances under which it appeared to have been committed, were such as naturally created a suspicion against the inmates of the family; for it was found that nothing had been taken away; that no actual violence had been committed in entering the house; that the iron bar with which the window was fastened, where the assassin entered, was taken down and carefully placed against the side of the window. The breath of scandal was spread, no doubt as since has appeared, to have been the intention of the prime instigator of the murder to cover his own atrocity, imputing the deed to the favorite nephew and principal heir of the deceased, Stephen White. But the filial and parental-like affection, which was known to subsist between them, and the grateful attachments of the uncle to the nephew; and those who knew the man, the honor and integrity of his mind and heart soon dissipated this ephemeral slander.

Still, Gentlemen, the perpetrators of this heinous crime, who did the deed, were heretofore indicted upon circumstantial evidence. But not a conjecture was heard against the real authors

of the murder, until a letter was handed to the committee, under the signature of Grant, but really written by *Palmer*, addressed to J. J. Knapp, not having the addition of *Junior* to it; by that means it was handed to the committee by the father.

Gentlemen, a few words more, by way of preliminary remark. The Knapps were arrested at the request of several persons—gentlemen of the committee. The Rev. Mr. Colman received the voluntary confession and disclosures of Joseph J. Knapp, in writing; accordingly to redeem the pledge on the part of the Government, I have called him before the grand jury this term, as a witness; he refused to testify, stating that he was not bound to criminate himself.

The counsel for the Government do not confidently expect that the evidence given by you will justify the belief that the prisoner at the bar, actually gave the blow on the head, or the stabs on the body of the deceased. For he, who it will appear did the deed, wretched man! like his great *prototype* who betrayed the Saviour for thirty pieces of silver, smitten with the stings of conscience, has gone and hung himself; though less scrupulous than Judas, he has never returned from the ways of iniquity. It is however, immaterial whether the prisoner at the bar actually gave the mortal blow, provided he was present aiding and abetting the person who inflicted them; he is charged both ways. By the very ancient common law, before the reign of Henry IV, of England; he alone, who gave the blow, was considered as the principal offender; and those who stood by, in aid and assistance of him who actually committed the felony, were held to be only accessaries; and these aiders and abettors at the time of the felony had the same right that accessaries before the fact, now have that of not being tried till he that struck the blow, should be tried and convicted. So if he who actually struck the blow died, before he was tried and convicted, the accessory could never be tried, and of course escaped punishment. But this principle was found to be so repugnant to the common understanding of mankind, that in the time of Henry IV, the Judges of both benches concurred in altering that principle.

The following witnesses on the part of the government were then sworn and examined.

**BENJ. WHITE, Sworn.—Attorney General.**—Were you employed in the family of Mr. White? I was Sir. State to the Court and Jury what you know about the murder of Capt. White. On the 7th April Last, about 6 o'clock in the morning, on coming down stairs, I saw a window had been opened. I called to Mrs. Kimball, told her some one had been in the house. Went to the chamber of Mr. White, opened the door, and saw Mr. White upon the bed dead—came down stairs and told Mrs. Kimball and went for the neighbors.

**Att'y Gen'l.**—What did you see? I saw his face—it looked pale



—The clothes were down—he was cold. *Att'y Gen'l.*—Did you see any blood? I think I did see blood upon the flannel. I then went to Mr. Mansfield, Stephen White, and other places—I did not awake during the night—the window was open twenty one or twenty two inches—it is some times left open two or three days—the bar was standing at the right side of the window—I found the bar inside.

*Webster.*—Who lived in the house beside Capt. White? Mrs. Beckford, myself and Mrs. Kimball, lived in the house—Mrs. Beckford was at Windham—the house is four stories high.—Capt. White's chamber faced the west. Capt. White slept in the room over the parlor. I sleep over Mrs. Beckford unless the chamber was occupied by strangers. No one but Mrs. Kimball and myself were at home on the night of the murder. I saw nothing suspicious in the morning but the plank which was standing west of the steps, near the door.

Capt. White went to bed on the night of the 6th April, about 20 minutes before 10 o'clock. He was 82 years old. He generally retired to bed at 9 o'clock—he was in some measure deaf—Could hear better upon one side than the other—he generally went to sleep immediately after he went to bed—slept two or three hours then woke up—I have known him to get up in the night he was found lying nearly on his back, on the morning after the murder. The bed stood head towards the east. Mrs. Beckford was gone away—I went to bed quarter before 10 o'clock. I left Mrs. Kimball in the kitchen raking up the fire.

*MR. SAUNDERS Sworn* to prove the plan and survey of the house and premises.

*CROSS EXAMINED.*—*Gardner*—What means had you of knowing the time you went to bed. *Ans.* When I went to bed I looked at the clock, it wanted five minutes of 10. Did you know the front door was fast in the early part of the evening. *Ans.* Yes, Capt. White was in the habit of fastening the door. Was any person in the habit of coming into the house without knocking. *Ans.* J. J. Knapp, Jr. was in the habit of coming to the house often—J. F. Knapp came very seldom to the house. Capt. White was not in the habit of keeping lights burning, did not observe the street shutter to his window, north window was barred, it was the only one that was barred. Was there chamber furniture in the room, fire set, shovel and poker? *Ans.* Was no poker in the chamber, but there was a poker in the parlor. I do not remember of waking in any part of the night. *Dexter*—Do you recollect some person was expected to see Mr White that evening? *Ans.* I don't know.

Mrs. Kimball set up later, than I did, I went to bed immediately after I went up stairs. I passed by the kitchen door—nobody there but Mrs. Kimball. *Gardner.* Do you remember seeing any person at Mr. Whites a day or two before the murder?

*Ans.* I do not—we usually got persons to set up with the body of Mr. White—there was nothing missing from the house.—Know there was money in the chamber, but dont know how much. I know the window was barred. *Webster.* Had you known it unbarred? *Ans.* No. How late did you see J. J. Knapp? *Ans.* about three weeks—dont recollect of seeing him more than once or twice—he frequently came to the house at Capt. Whites. *Att'y. Gen'l.* Did you ever know him to go into the room of Capt. White. *Ans.* No, never.

*MRS. KIMBALL, Sworn.—Attorney General.*—Were you a domestic in the family of Mr. White, at the time of the murder? *Ans.* Yes; I was there on the night of the 6th April, when the murder took place. *Att'y. Gen'l.* Please to relate what you know about the murder.—On the morning of the murder, Benj. White came to my door—told me some person had been in the house. I said to Benj. you had better go up to Mr. White—He came down and told me Mr. White was gone to the eternal world—I went into the yard—saw Stephen White—he asked me about his uncle—I did not see the body, till I was called before the Jury cf inquest. Mrs. Beckford left about half-past 11 o'clock on Tuesday—went to Winham. I went to bed before 10 o'clock—I don't know that I went up stairs before Benj. White. I slept in the parlor over Capt. White's chamber—there is blinds and shutters on my room—there are four windows in my room—there was no blind on the north window—I don't know that Capt. White shut the window—he had a hem or cough. I could hear him in the latter part of the night—I frequently heard him. My impressions are he was deaf in the left ear.

*CROSS-EXAMINED.—Gardner.* Do you know he laid awake any part of the night? I do not know he laid awake that night, he did some times—I did not hear him get up on the night of the murder.

*Webster.* Did he leave a light burning in his chamber? *Ans.* He did not.

*DOCT. SAMUEL JOHNSON, called.*—He stated that he was called about seven o'clock; was informed that Capt Joseph White had been murdered in his bed. He went to the house in company with Stephen White, entered his chamber, found the body of Capt. White lying on the right side: there was an appearance of a violent blow on the left temple, inflicted by some unknown instrument:—that he also found thirteen stabs on the left breast, near and about the cavity of the heart;—a jury was summoned by Thomas Needham Esq. who held an inquest over the body. The jurors returned the following verdict, that “the said White came to his death by a blow on the left temple, and by thirteen stabs in the left side, in and near the chest.”

*Doct. Samuel Hubbard, Sworn*—Stated that he was present during the examination with Doct. Johnson, as an assistant.

**BENJAMIN LEIGHTON, Sworn.—Attorney General.** Have you ever heard a conversation between J. J. Knapp, Jr. and J. F. Knapp? *Ans.* I have. *Webster.* Where do you live? *Ans.* I live in Windham with Mr. Davis and the Knapps and Mrs. Beckford. I have lived there since the sixth of October last. I heard a conversation a week before the murder. After dinner I went to the lower end of the lane, and got over the wall and sat down there to take a little nooning as I usually do, a few minutes. I heard some men talking—it was Francis and J. J. Knapp, Jr. *Jo* said When did you see Dick? Francis replied, this morning. When is he going to kill the old man? If he don't kill him soon, I won't pay him.—They turned back and I heard no more. This was the Friday before the murder. I never said any thing about it to any one. I know the two Knapps, and cannot be mistaken about the conversation—I am eighteen years old. *Att'y. Gen'l.* Did you ever see Richard Crowningshield, Jr. there? *Ans.* Not that I know of, I did not know him. I know Francis Knapp: he came up there to see Capt. Knapp—He came once about 9 o'clock in the evening, in a chaise, after the murder: it was before Frank came to stay; I think it about a fortnight—He came in a chaise—There was a gentleman with him in the chaise, at the door: *Jo* Knapp, Jr. was at the house; Frank went to see him and talk with him;—he got out of the chaise, and asked if *Jo* was at the house—*J. Beckford* said yes. They went into the room—shut the door and were together there an hour—I went to the door with a light, to see who was in the chaise—did not know him—I did get into the chaise—He sat in the chaise all the time Frank was there—Saw Francis Knapp get into the chaise and they went away together—Could not tell which way they went.

**CROSS EXAMINED.—Gardner and Dexter.** How far is this house from the road? *Ans.* About fifty rods. I heard a conversation, it was down next to the pasture. I had just come from dinner. *Dexter.* Who was at Windham at that time? *Ans.* Mr. Davis, J. J. Junior, & Francis Knapp. Where were they when you left the house? *Ans.* They were standing by the gate near the house—I went down the avenue, and was waiting for Mr. Davis, taking a little nooning, as I generally do. I went to the gate and Mr. Davis joined me. Said nothing to him about what I had heard. I have been asked to testify. They sent for me to come to Mr. Waters' Office in Salem. I told them I knew nothing about it. One of the men said I had told of it, I said I did not recollect it. I did not go before the Grand Jury, (didn't know what the Grand Jury was) I was taken to Mr. Waters' office twice. They asked me if I knew any thing about Richard Crowningshield and Francis Knapp. I said I did not. They told me I had told Mr. Sterrit that I did. I said I did not recollect. They said they would make me recollect it when I

came to Court. I told Mr. Waters if they would come to Windham, I would tell them all I could remember. I went to his office again about five o'clock, P. M. They said I must remember what I said—that Sterrit and Dr. Kilham heard me. I said I told Mr. Sterrit without thinking. I saw Mr. Waters, Choate and Treadwell, who said they wanted me to tell them all I knew. I now recollect what I had told Mr Sterrit, I could not recollect the conversation in Salem, because I was frightened and in a strange place. *Webster.* Does Mr. Sterrit keep a store at Windham? *Ans.* Yes. I went down in the morning to his store—He asked me what was the news of the murder. I said, they think I don't know any thing about it. I said I guess I know more than they think for I did not mean to say any thing about it for fear the two Knapps would kill me. After the murder, Frank took out his dirk, and kept pricking me with it. I first told the conversation to Thomas Hart. *Gardner.*—How long have you known Francis Knapp? *Ans.* I have known him ever since he came from sea. He has carried a dirk since the robbery at Windham. I am now afraid if they get clear they will kill me. *Dexter.*—*So you don't mean they shall.*

J. C. R. Palmer, took the stand.

*Attn'y. Gen'l.*—Do you know the prisoner at the bar? Yes. Did you know Richard and George Crowningshields? *Ans.* Yes. I have been at their house in Danvers, have seen Francis Knapp there twice. The first time was in the afternoon of April last, about 2 o'clock, P. M. and another man by the name of Allen with Richard. I saw him from the chamber-window—Francis Knapp and Richard Crowningshield went away together. I did not see them again till after 4 o'clock. Four o'clock that day saw them again on horseback. Allen and Knapp went away, saw the two Crowningshields after Knapp went away. They came into the chamber. We talked about the proposed murder of Capt. White. Both Richard and George talked about it. George proposed to me to be concerned in it, in the presence of Richard. They offered me one third of the money to be concerned in the murder. This was to be paid by J. J. Knapp Jun. Richard said it would be easy to meet him that night and upset his Carriage. They knew that he had gone out to his farm. Jo Knapps object was to have a will destroyed. George said that I was poor and it would be a good time to supply my wants. He intimated no other time for committing the murder and said that the house keeper would be absent from the house at the time the murder was committed. Frank Knapp came again between seven and eight o'clock P. M., in a chaise alone, and staid a half an hour. Richard Crowningshield went away with him in Franks chaise. I did not see him again afterwards until now. Richard came home between eleven and twelve o'clock. I left Danvers next afternoon, Saturday. The Will was to have been destroyed

at the time of the murder. J. J. K. Jun. was to obtain the will as he could get the keys of the trunk from the House-keeper. I next saw the Crowningshields on the night of the 9th April, at their own house, when Richard went off in a carriage—he said he was going to Lynn Mineral Springs. On the evening of the ninth, I went under the chamber window and spoke to George Crowningshield; he asked who was me. I told him no one, and asked him to come down. He came—he asked me if I had heard the news in Salem. I then went to Lynnfield, and left Cass' tavern that same night—afterwards I went to Providence—Did not go to the Eastward.

I saw George and Richard on the evening of the 27th, about 10 o'clock. I remained there two days—I had four *five-frank-pieces*, from Richard Crowningshield, Jr. I asked him for them. I went on the 23d to Lowell, thence to Boston and Roxbury, thence to Belfast by water with Capt. Boyle. At Belfast I wrote to Jo Knapp, under an assumed name. [The letter was here shown and acknowledged to have been written by Palmer.]

The COURT adjourned to MONDAY.

Monday, August 16.

Rev. HENRY COLMAN took the stand.

*Att'y Gen'l.* I would inquire of you what you know of Francis Knapp the Prisoner at the Bar. I knew him by sight only, till he was arraigned before Justice Savage on the 28th of May last. I was afterwards in the cell of John Francis Knapp—went there at Phippen Knapp's (his brother) request. Phippen said, Well, Jo, has determined to make confession and we want your consent. The reply was, he said it was not fair that Jo should have the advantage of the confession, since it was done for his benefit. Frank said I told Jo when he proposed it, that it was a silly business and would only get us into difficulty. Phippen by way of reconciling Frank, told him if Jo was convicted, there would be no chance for him (Jo) but if he were, he might have some chance of procuring a pardon. Phippen asked me if I did not think so. I said I did not know. I was unwilling to give any improper encouragement.

F. Dexter requested the witness might be cross-examined, as he believed he had not stated all which he related on the former trial. Some objection was here made as to the admissability of Mr. C's. testimony. The court ruled in favor of admitting the confession unanimously.—Mr. C. resumed.

The statement was made before Phippen, early in the conversation. Nothing took place which I remember as to encouragement to Frank. Phippen stated if Jo made confession, and was convicted, there would be no chance for him, Jo. If Frank was

convicted there was a chance for him.—Phillip conducted the conversation. The prisoner said to me you will be willing to use your influence. I said I wished him well;—the encouragement is nothing more than I have stated. No intimation was made by me or in my hearing, of threats or favor to John Francis Knapp. Soon after the interview I found a club under the *Howard-street Meeting House steps*. About one o'clock, P. M. I invited Doct. Barstow to go with me—Under the steps is a *rat-hole*, in which I found a club. I was told by the prisoner at the bar, where the club was. He gave me *precise* direction and in consequence of which, I found it as he had described,

**S. C. PHILLIPS, sworn.**—Was one of the Committee of Vigilance—J. and F. Knapp came before the committee at their request, respecting a robbery said to have been committed upon them

Tuesday afternoon, it was said in town that J. and F. Knapp had stated they had been robbed—great excitement—newspapers published our meeting on Thursday. consisted of 27 members—I took memoranda of their statement—the account from statement taken from Joseph Knapp, Francis being present. Shown to Francis, and he assented to its correctness, with trifling verbal alterations only.

**KINSMAN, sworn.**—Was present with the committee the night of meeting. Mr. Phillips took down their story, it was read to both the Knapps, and they assented to its general correctness.—On Tuesday 27th, left Salem for Wenham, met three men near the hills. Some resemblance in their description of the men who attacked them, and also to others of whom we were suspicious—those who were mentioned in Brown St.—wore short jackets and glazed caps—only asked as to dress in order to compare the result with those we had seen—they differed in other respects—The committee consisted of twenty-seven, met every night for several weeks.

**W. PALFREY, sworn.**—Is Editor of the Essex Register—identified paper of May 2d—know the two Knapps very well—did not apply to me, but I applied to them for an account of the robbery—identified the account published—had heard of the robbery several days—met the Knapps at the Reading Room—asked them to state an account of the robbery, they did, and it was the one published in my paper—had no doubt of the truth of the story at the time.

**N. BROWN, sworn.**—Is Jailer at Salem—R. Crowningshield was a prisoner on the 15th of June—a little before 2 o'clock on that day went to his room to carry a note—called twice and no reply was given—looked through the door and saw him hanging by a handkerchief to the grate—took him down and went for a doctor—when he arrived, thought life was not quite extinct—Doct. was unable to bring him to, and therefore went for the coroner—inquest was held.

Government put in the proceedings of Coronors Inquest held over the body of Rich'd. Crowninseild.—The Jury requested permission to view the House and premises of Capt. White.

STEPHEN MERRICK, *sworn*.—Do not know F. Knapp; live in last house in Brown St. before you go into Newbury St.; on the north side, opposite Mr. Andrews; about 15 minutes before 9 o'clock; on the night of the murder, saw a person standing at the post opposite my shop. Had a fair view of him; did not know who he was, but as he appeared waiting or looking for some one, I was induced to notice his movements: stood there, moving but little, till the bell rang for 9 o'clock; after that time, I closed my shutters as usual; I left the slide out of my door to see if any one joined him; after waiting half an hour went home; had on a light frock coat; don't know what he had on his head.

PETER E. WEBSTER, *sworn*.—Live at the head of Bridge-st.—shop in Essex-st. opposite the head of Newbury street, have property near Branch Meeting-house, occupy its cellar. When I went home on the 6th April half past nine or ten o'clock, went down Brown-st. then down Howard-st.—

J. A. SOUTHWICK, *sworn* Lives next house but one west of the rope-walk; that makes one corner of Brown-st. and Downing the other. Evening before the murder I left my house in Essex-st. about half past ten o'clock, and as I passed by the rope walk, I saw a man sitting there; and passed him, he held his head down; I stood in front of Downing-st. a few minutes, and then walked down by him and back again, and finally entered my house with the full belief that the person I had seen was Knapp. He had on a dark cloak and glazed cap. Had known Francis Knapp before; was brought up within a few houses of him and knew him from childhood. Went into the house, my wife was up; same person was in my mind all the evening; walked out again to the corner of Downings house; on looking down Howard-st. saw Capt. Bray coming up; I saw a person on the Rope-walk steps which I thought very suspicious; he said he had seen one also, and pointing him out to me leaning against a post, observed "there he is now." As we were conversing about the person we saw him approach towards us, and passed without apparently taking notice of us; went to the corner of Mr. Brays house; I was near Downings on that side, the person alluded to was on the opposite side. We went down a little way, and then went into Brays front door, near the post. When he reached the post we went up to Brays front chamber; I told Bray to look out and I would keep back; he did and said to me "he is yet there and another one has just come up," and that they had passed over to the other side of the street; I remember from the western windows of seeing some one running across the streets towards the Rope walk; and soon after, another person going towards the Common; We followed down Howard-st.

he said, I think there is a man sitting on the rope-walk steps and back by William-st. but saw nothing of them. Before I went to bed I mentioned the circumstances to my wife, and told her I thought the person was Francis Knapp; Dont remember his dress when leaning on the post.

CROSS-EXAMINED.—First saw him, about half past ten o'clock left my fathers house about that time; think I took out my watch and said it was time to be walking up; the man was three feet off, when I passed; have known him long; did not speak to him; dont three-fourths of the time when I see him; did not see his face; wore Camblet cloak, was sitting down, saw that he was cross legged; did not rain then; misty at times; damp evening; can swear the person wore a glazed cap; went out from suspicion that all was not right; met capt Bray near Downings; Cant say what my suspicions were; told Bray I had seen a person on the steps who was suspicious; did not see the men on the post till Mr. Bray had pointed them out; was in front of Downings house, and saw him pass down on the opposite side; cant say how he was dressed: supposed it to be him because I saw no one else in the street—at an examination before a grand Jury, Knapp stated that I took it to be Francis Knapp from his genteel appearance; I looked out of the window when Mr. Bray said another had Joined him; the post was within 6 or 7 feet—No recollection of having said it was Francis Knapp; said one of them was about the size of Mr. Pierce. Don't remember to have told Bray that it looked like Francis Knapp or Mr. Pierce Don't know how the man who crossed the street was dressed. Had no doubt that this person was one of those watching. Was looking out of the window 5 or 6 minutes. Glazed caps are quite common, many young men wear them, and camlet cloaks. Don't know that I was ever examined before, have been sent for, and questioned at White's house; don't remember of having been examined, previous to the arrest of the Knapps. From the western window could see towards the common. Before the grand jury—did not tell them that I thought it was Francis J. Knapp; said it was a man about Selman's height, but did not intimate to them any suspicion that it was Selman, —looked over the burial ground and then walked round it faster than usual; had a little conversation and then went into my house, talked about nothing in particular; Looked at time piece w s ten minutes past 11 o'clock.

CAPT. BRAY, *Sworn*—I live near the corner of Brown st. on South st. —met Mr. Southark on the evening of the 6th April. I went out of Essex through St. Peters' and Church St, into Brown St. at the post before Mr. Shepard's—saw a man dressed in an cloak, large at the bottom, and a dark shining cap—I was on the side walk—he came south—I went on till I saw it was last witness—I said, what are you out here for so late!



—I said there stands the man—I could see him perfectly well—Mr. Southwark said he did not like the looks of him—he had pulled off his cloak and was going to look for him—it was blowing cold and we stepped in by the rope-walk, and the man that I had seen passed by, I went into the gate he passing about 20 feet from us—we went in, up chamber—I went to a garret window, and could see him near the post—I did not leave the window, or loose sight of him till he went away. In 5 or 6 minutes a man came up Brown St. in the middle of the road. Could not have come Newbury St. as I must have seen him—the man at the post was an hundred or hundred fifty feet from the other when I saw him first—he came up directly, stood there a few moments, and then went westward towards the middle of the street—stood close together at the post, and not more than a foot apart, in the middle of the street—stood there a minute or so, a man came from the east—had on light clothes—run down to Howard St. as fast as he could, and soon out of sight—the other went at last and when he was out of sight we came down at once, but could not see any thing of them—Southwick and I went to Branch St. looked over the burying ground fence five or six times, but could see no one—on new road saw a waggon passing along the road towards the east—a light waggon with a man in it—went to Wm. Street, and home—did not know Francis Knapp—had seen him in prison, and at the Bar. Can't say if he is the person that I saw that night—size agrees—should think it was forty minutes after ten, when I met Southwick—Know the locality of Capt White's—from Downing's steps can see the west end of the house—no lights in the windows of the chamber of Mr. White's house.

*Mrs. Sorunwick Sworn*—Mr. Southwick was out on the evening of the murder—after ten he came in and went out again, Can't say whether it was before or after eleven when he came in, within five minutes of it.

Bray had on dark coat and pantaloons, Southwick had on a blue coat—both had hats.

Mr Kinsman.—Could see the window of Capt Whites chamber, near the corner of Howard-st. when in Brown-street.

Miss Jaques.—On Tuesday night before the murder, passed through Brown-st. about ten o'clock; saw three men on the steps of the rope-walk; two of them were standing, and one pointing towards Capt. Whites house, had something in his hand, looking at it—thought it some musical instrument. The two who were standing had on glazed caps.

J. BURNS, *Called*—Born in old Spain, lived in Salem twenty five years—stabler in St. Peter St. Know F. J. Knapp, have talked with him in the stable after the murder just after the Wexham robbery—He asked if there was any one in the stable but me, I replied 'no.' *Frank*. have you have a loft up stairs? *B.*—Yes sir. *Frank*—The best way is to go up there, I want to say

some thing particular to you. We went up together—Frank asked me if I knew any thing about Capt. White's murder. *B.* No, I wish to the Lord I did, because I would make it known, pretty quick. *F.* The Committee have heard that you was out that night, and if you saw any person that you know keep it to yourself. Joseph is a friend of yours, and so am I. The Committee wanted to pump me, and see if they could catch me any way. *B.*—I know all the members of the Committee. and if they want to see me, I will answer—What do you think of the Crowninshields, in jail? *F.*—They are as innocent as you and I are. *B.* Who do you think it can be. *F.*—Stephen White must be the one. *B.*—Don't tell me any such thing as that, I know him too well, I knew him when he was only eight, ten years old; Frank put his hand in his bosom, on his dirk—I said to him, damn you I don't care for your dirk, or twenty more. *F.*—I was a friend to you and came to give you this information that you need not get into trouble.—Know Joseph J. Knapp, Jr. used to come and put up his chaise. He was there

*MR. OSBORN, Sworn.*—He stated he kept a livery stable—that Francis Knapp was in the habit of hiring horses and chaises of him. On the first of April he had a horse and gig to the Lynn Mineral Springs. On the second he had a saddle-horse to Dustings. William H. Allen had a horse at the same time. On the third a saddle-horse to Wheeler's, about half a mile from Dustings. It was charged on that day. On the fifth he had a saddle-horse to Wenham. On the sixth, place left blank. On the nineteenth, horse to Wenham.

The 21st, Horse and gig charged to Jo.

" 23d,	"	"	"
" 24th,	"	"	not charged on the day.
" 25th,	"	"	
" 27th,	"	"	to Wenham.

*WILLIAM H. ALLEN, Sworn.—Webster.*—Have you ever seen these letters before? (passing the letters to the witness.) *Ans.* yes. I put them into the Post Office at Salem, on Sunday evening between 5 & 6 o'clock, P. M. the 16th of May last, by the direction of J. J. Knapp, Jr.—he said that his father and brother came up to see him yesterday and brought with them an anonymous letter, from somewhere down east. The letter contained a devilish lot of trash—The fellow said he knew all my brothers' plans and swore he would expose me if I did not send him some money. They said they had a good laugh and requested their father to give it to the Committee of Vigilance—and they would make fine sport of it. I want you to put these two letters into your Post Office in order to nip this silly affair in the bud. Some other things were said, about Mrs. Beckford getting old. One of the Letters above alluded to dated Lynn May 12, 1830, addressed to the Hon. Stephen White, Salem, Mass. The

following are the contents—"You will please to send me \$5000 before to-morrow night or suffer the consequences." Signed, 'N. Glaxton, the fourth.' The other letter was addressed to the Hon. Gideon Barstow, Salem, Mass. Gent. of the Committee of Vigilance. The following are the contents:—"Hearing that you have taken up four young men upon suspicion of the murder of Captain Joseph White. I have the honor to inform you that Stephen White told me that he would give me five thousand dollars if I would perform the act,—I told him I would do it, &c. Signed, 'Yours, Grant.'—I went to Danvers frequently, with J. F. Knapp, was there on Friday."

Mrs. SANDERS, *Sworn*.—I remember a young man came on the 24th or 26th. I think it was before Mrs. Beckford moved up; before the robbery of J. F. and J. J. Knapp, Jr. One of them had on a dark suit. I think <sup>as</sup> before the Robbery was committed. I did not know Mr. Knapp at that time.

CAPT. JOSEPH DOWNING. *Sworn—Att'y Gen'l.* When you returned from sea did you bring home property for Joseph Knapp?  
*Ans.* Yes. I brought some five franc pieces, part of which were for Capt. Knapp. They were sent by a merchant to Capt. Knapp from Point Peter, part of them were sent to bank. The remainder, five hundred, were paid to Capt Knapp. They all went to the bank except Capt. Knapp's. The balance were deposited in Mercantile Bank. They were delivered him the 21st of April last, as appears by his receipt.

Daniel Marston *sworn*.—I know Geo. Crowninshield, in the Spring I received from him two five franc pieces the night before his arrest on Saturday.

Geo Felton *sworn*—I know Geo. Smith, I have not seen any one pay him 5 franc pieces. Evening before the arrest of Geo. Crowninshield, I saw him pay some silver to Mr. Smith.

Joseph Shatwell *sworn*.—In the Spring, last. Capt. Dawing brought home, 5 franc pieces of Mr. Knapp and others, they were paid into the Bank, it is not an uncommon coin.

Mr Endecotts called.—Had a conversation with J. J. Knapp jr. in July last; Capt White had an ill turn; Jo said if I had been in town Mrs. Beckford would not have sent to Boston for Stephen White, for he had no doubt if Stephen White was present at the old gentlemans death, he would destroy all the notes held by the Estate against himself; that Stephen White was the only Executor; that Mr. Lambert was dead the only witness to the will—witness doubted—Jo said black and white would not lie. I asked if it was not locked up. Jo said yes, but there is such a thing as two keys to a lock.

J. W. Treadwell—Cashier of Mercantile Bank; have seen and received of five franc pieces; few in circulation; never knew them at discount; always at par; Mrs. Bickford was niece and house keeper of Capt. White's.

JOHN HART *sworn*—stated he lived at Wenham with Mr. Beckford, on the 9th of April last. He knows Capt. Knapp

and Francis Knapp—think Mrs. Beckford went there about the 15th April, after the murder. She went there to live. Frank Knapp came there about the 25th, on Saturday of the same month. Saw him one evening about seven o'clock. He came in a chaise. J. Beckford said, how came you here to night. He said he came to see Jo. I could see the chaise. I should think there was somebody sitting up in the chaise. They went out and I heard their voices, The chaise came there a little after 7 o'clock. It was dark and cloudy. Frank had on a camlet cloak.

Dr BARSTOW.—I went in with Mr Coleman on the 29th of May to see the prisoner went also to Howard st. he (Colman) did not want to go in view of the jail he put his hands under the steps of the church and did not find the club; put in his hand further and pulled out the club. this said he was what killed Capt White; never received but one franc piece.

Mr. Webster—stated, the counsels had agreed on both sides to save time that the evidence given in the former trial to prove the *alibi* of Geo. Crowninshield should be red to the Jury; he then read from his minutes the testimony.—Court adjourned,

Court met according to adjournment.

Miss Jaques called again.—She saw in possession of the three persons mentioned before, something. she thought it a bugle—here closed the testimony on the part of the Government.

Mr. Gardiner then opened in defence of the prisoner. He besought the Jury to resist the influence of public opinion, and to judge the case by the law and the evidence to be brought before them.—Mr Gardiner remarked that if Rich'd. Crowninshield and Francis Khapp went down Brown-st. together, and if Francis pointed out that the lights were extinguished and waited there while Rrichard committed the murder, he would not be principle. If the Gov't. proved that he was in Brown-st. knowing that the deed was to be done, that would not convict him upon the indictment, the prosecution was what was called in ancient time and appeal of murder, etc.

Mr. Vose—clerk of the States Prison at Thomastown, testified that Palmer was a convict in said prison.

J. W. WEBSTER, *sworn* ---Live in Belfast: identified Palmer known him eight years: had no reputation for truth, his stories are not to be believed. I know nothing in his favor; very bad fellow; have heard one hundred people say they would not believe him in any case.

WILLIAM BABB, *called*, Keep a tavern at Saugus, on the Island house half way between Salem and Boston; Identifies Palmer; have not seen him since he left my house: not positive about the morning; but according so minutes he came on the evening of the 9th, left on the 10th; heard of the murder of Capt. White on the 7th afternoon.

ALFRED WELLES, *sworn*.---Lives in Boston: imports hard-ware

nd fancy goods; have sold an unusual number of pistols within a few weeks past; have had many orders from Mr. Johnson of this place, as long as I had any left. Emptied my drawers once or twice in June; immediately after the murder had orders from here; sent them down; have sold in Boston to respectable persons; sold every pistol and dirk we had in the store.

Messrs. Ward, Wiggins, & Pierce, *Tailors*, were examined and stated frock coats and glazed caps were common dress.

James Savary, saw a person go out of Mr. White's yard about 3 o'clock on the morning of the 7th of April, who turned and ran as soon as he saw witness. Mr. Webster asked if he had ever seen the same person since? He replied that he believed he saw the same person in a few days afterwards in the street—but he did not feel at liberty to tell, who it was. Court—The question must be answered. Witness could not swear to the person but he always supposed it to be Frank Knapp. Witness mentioned soon after to a gentleman with whom he was riding, when he met Frank, that *he* was the *same* person he saw come out of the gate—had been questioned, but had never before mentioned who it was.

Mr. Dexter asked if it would be proper for them to introduce witnesses to contradict the evidence brought out by the cross-examination.

Mr. Webster said they could disprove the fact, but not discredit the witness.

Judge Morton—The argument upon this point can be omitted till morning.

Mr Wolcott, testified that he met a person before 4 o'clock on the morning of the 7th, who turned and ran, upon seeing the witness. The person appeared to be dressed in a short jacket

Mr Nathaniel P. Knapp, said he was present at a conversation between the prisoner and Mr Colman, which took place in consequence of Joseph's requesting him to ask Frank's consent to his (Jo's) becoming a witness; on the day after the arrest, he entered the cell with Mr Colman, and told Frank Mr Colman said he was assured that confession was their only salvation: that a pardon would go through town that night for Palmer, but that it might be stopped. I also told him that our father had been assured by the committee that Palmer knew all about the murder. I asked Mr Colman if this was not so, and he said yes. I told him—if Jo was convicted there was no chance for him, but that if he (Frank) was convicted, there might be some hope of a pardon. Mr Colman told him his youth would be in his favor, that his case would excite sympathy, especially if it should appear that he was influenced by his elder brother. Mr Colman also told him that he was authorised to offer the pardon to either, but that one must confess immediately. Frank said he had nothing to confess, it was a hard

case, but if things were so, Jo might confess, and he would take his trial and his chance. Nothing was said about a club at this conversation. We went from Joseph's cell to Frank's cell, and Mr Colman entered at my request. I did not hear the prisoner asked whether he was at home on that night. The next time I saw Mr Colman was at my office: he said he was going to Boston to see the Attorney General. Between Jo's cell and Frank's cell, Mr Colman requested me not to disturb the club, and he would get a witness and take it himself for his own security. The next morning (Saturday) I met Mr Colman on the turnpike: I got into his chaise: he showed me the promise of the Attorney General, and asked me to go back to Salem: I told him I would be back before 2 o'clock, and he said he would not visit Joseph till I came back. He said he had forgotten whether he got the story of the club from Jo or Frank. I told him surely not from Frank, for he said nothing about it: he said well, he believed it was so; but he did not know but he had been misunderstood by Mr White at Boston, and wrote a note for Mr White, which I carried to Boston, but did not find Mr White. I got back to Salem about 3 o'clock: I went to the prison and requested permission to speak with Mr Colman. I knocked at the door of Jo's cell, but Mr Colman said he could not admit me till he had finished his business. I returned to my office and Mr Colman came about 5 o'clock, with a paper: he said he would show it to me in the presence of witnesses at Mr Barstow's: and when he was ready would send for me. He did send, and when I went to Mr Barstow's he said the committee thought it not proper that I should see it. Mr C. subsequently told me that he had not been misunderstood by Mr Stephen White. Mr Colman called at my office on the 20th or 30th of June: he said he called to refresh his recollection about the interviews with my brother Frank. He said he derived his information relative to the club from Frank: I denied it: he said he surely did not have it from Joseph. While we were disputing, Mr Dexter entered, told he was excited, and endeavored to reason with him. Mr Colman insisted upon going to see Joseph, and consented that Mr Dexter should go also, provided there were other witnesses. They did go with others. Nothing was said in Frank's cell about the dagger. When I met Mr. Colman on the turnpike, I was going to see counsel at Boston, and was anxious to get back again as soon as possible. Nothing was said in the cell about who went into the house at the time of the murder.

Mr Webster cross-examined the witness: Did you on the first interview in the prison, go with Mr Colman from St. Peter's-st. to the prison? I do not remember. Mr K. then remembered that while they were conversing, he thought, they saw a chaise stop at the gate of the prison, containing his brother's wife and her mother. He could not say whether he saw, or whether Mr Colman said they were in it. He thought Mr C. spoke to them, but did not hear what Mr C. said. Witness believed he went into Joseph's

cell with Mr C. but he could not recollect. He was in the cell. Mr Brown opened the door for them. He could not recollect how the conversation was opened. He could not recollect any conversation that took place in Joseph's cell, except the request that he would visit Frank. He presumed, and had no doubt, he heard all that passed between Mr C. and Joseph. Did you not state before that you heard all Jo's confession? Never, I said I presumed I heard all that was said. I had no idea that I should ever be called upon to state what took place at that interview. Did you go to Joseph's cell at your own request or at Mr. Colman's request? I told him I would go with him. Was any thing said about going while you were in St. Peter's street? I don't recollect. How long was you in Joseph's cell? A few minutes, perhaps 10 or 15. Was any thing said about Jo's becoming State's evidence? Yes sir. No confession made, was there? No sir. Did Frank say that it was hard that Jo should have the privilege of confessing? No sir. Did he tell Jo it was a silly business? No sir. You undertake to swear that nothing was said about the club? Yes sir. Nor the dagger? Yes sir. Nor about who was in the house? Yes sir, I heard nothing. Mr Colman visited the prisoner against my father's wishes and my own. I never told Mr Wheatland it was the wish of the family. I never told Mr Wheatland Frank was in Brown-st. on the night of the murder. Why did Mr. Colman ask you not to take the club? He wished to get it himself. When did he learn from Jo where the club was? I do not recollect, only Mr Colman asked me not to disturb it. How came he to ask you such a question? I suppose he knew I had learned where it was. When did you hear it? I think he must have told me. If nothing was said in Jo's cell, nor on the passage to Frank's, nor in Frank's cell, how do you make it out that you learned where it was, in the prison? I said nothing was said in Jo's cell to my knowledge; I think Mr C. must have told me when he requested me not to move it: I had had conversations with Mr C. at my house, and in the street; I might have learned it at either interview. Jo agreed to become State's witness in my presence. Did he make this agreement before he made any confessions? I think not, but he had made no confessions to my knowledge. I have no recollection of telling Mr Wheatland that there were questions and answers in Frank's cell, I had no conversation of that kind with Mr Wheatland; I know I never told Mr Wheatland any such thing, as well as I know any thing. I never told Mr Wheatland that there was evidence enough to make R. Crowninshield a principal: I did not give him information which induced him to say that Frank had made a premature confession. I never did tell Mr Wheatland that it was Frank who was on the steps of the Rope-walk. I never told Mr Wheatland I went to the cell of Jo and found Mr Colman taking Joseph's confession, and that we then went to Frank's cell together.

Z. Berchmore, Balch, and John Forrester, Jr. were in company with Francis Knapp on the night of the murder before, and at nine o'clock. Neither of whom could swear positive it was on the night of the murder.

JO KNAPP.—Father of Francis Knapp made an assignment on six of April; was at home about five minutes before ten; came from Mr Waters house in Derby-st. to my house in Essex st. saw Francis Knapp just after ten, entered the room about five minutes after my parlor I mean, he came in and asked if he should bolt the door, I told him no; N. Phippen Kuapp was out and I should wait for him and attend to it. I am glad you are at home in good season he asked if I wanted any assistance, I told him no I could do it myself, I asked him how the weather was, he said blew fresh by East, I asked the time, said just ten; he went to his chamber and left me in the parlor, I did not go to bed till after ten; he rested in third story; only one stair case goes to third story; other door opened on passage to stair case; most commonly keeps his cap on window seat of parlor, saw it there that evening, no one moved in or out the house, except N. Phippen Knapp that night, I next saw Francis at breakfast, half after seven to eight came from his chamber, usually placed his cap in the kitchen; come home regularly at ten o'clock, a strict rule of the house, age of Francis, short of twenty. I left Water's near ten o'clock, saw him twenty or twenty five minutes after ten he came home to take the key and told me to go to bed if I wished he was making the assignment, he came back again about one o'clock, I went to bed about two, soon after he came in, did not go into the chamber of either of my sons, did not see them there.

*Cross Ex.* I saw Michael Shepherd at my son's office from a quarter to twenty minutes after nine o'clock, did not see him when I went home about ten o'clock, ten minutes before came from Watter's dwelling house, know that the clock had not struck ten, left my son with Mr Waters, saw Mr. Shephard next day, don't remember whether it was at his dwelling house on first part of day had some conversation with him about Francis being at home saw him next day (Wednesday) at Mercantile Insurance office had no conversation on that point, saw him in evening near Asiatic Bank no conversation after the arrest or next day, told him Francis was at home in bed before half past ten.

SHILLABER, *sworn* Was not present at the examination of Mr. Southwick before justice Savage enquired of Mr. S. after the arrest of the Knapps; about the men he saw in Brown St. met S. in the street; said he remembered seeing a young man on the steps; afterwards went to Bray's house; saw him again and another joined him; asked him which was the tallest of the two whom he saw; he thought the one that came last into the street was, asked him if they might not have been R. C. and F. Knapp: said yes.



MR. COLMAN.—Heard the testimony of N P Knapp—nothing to induce me to alter—my first interview with Joseph was on Friday 28th—think the interview in the Prison entry might have taken three quarters of an hour—went into the cell by leave of the Committee—came out at 1 o'clock—went again at Joseph's request and Mrs. K's at 3—staid till 4—Joseph desired me to bring his father and N. P. Knapp.—They desired me not to go as it would be said Joseph was making a confession. N. P. said he would make apology for me. I met N. P. Knapp after he left the jail. Benj. Beckford passed me with Jos. B. and others—Mrs. Knapp sent twice for me in June—I went and received the disclosure in full—N. P. Knapp came to the door—did not come in till it was finished—Francis said it must not be done without Joseph's leave—went to Joseph's cell by prisoner's request—then went to Boston—on return met Mr. Knapp at half-way house—I asked him to get into the chaise—he said he hoped I had not said any things of Francis—I said—I had but to guard against it. On seeing S. White I told him that I had not stated any thing from Francis.

CROSS-EXAMINED.—Remember going to jail to ascertain about club—to Joseph's cell to ascertain whether Joseph had particularly designated place of club—don't remember saying that Joseph had never told any thing about the club—remember but one rat-hole under the steps where I found the club.

Rev. Mr. Colman—added that he did not expect to be called as a witness against Frank, because he expected Joseph would have testified to all that he could know; he thought he did not state to the Attorney General the conversation of Frank Knapp. He took the offer of impunity, in form for either who might confess, excepting Richard Crowninshield, because he did not know but Joseph might deceive him.

Dexter—Then you expected Joseph might deceive you?

Witness—No, I did not expect it, I did not know, but some learned counsel might come down from Boston and tell him not to confess.

Mr. Dexter—Do you mean me?

Witness—Yes Sir.

Mr. Dexter—I think it very indecent.

Witness—I am sorry you think so, I did not mean to be indecent.

Mr. Gardiner—Did you expect counsel would come down?

Witness—I did not expect it. I did not know but from some reason, for counsel or otherwise; he might refuse to testify or give the confession in writing.

Mr. Gardiner—Did you expect he would for any reason refuse to testify?

Witness—I did not expect it till I found such to be the fact; if Joseph had broken his pledge I meant to have offered the pledge of impunity to Frank.

**T. W. TAYLOR, sworn.**—Know Geo. Crowningshield—saw him about fifteen minutes past 9 o'clock on the night of the murder, in Newbury St.; leading from Essex St. There was one man with him. My store is in Franklin buildings near the Common—C. was at the time I saw him, on the east side of Newbury St—did not speak to him—heard a person at the corner say "Hallo George, where are you going"—he C. replied "Down town." He went straight on towards William St.—Don't know which way he came from—Down means sometimes towards the water.

**G. N. WHEATLAND, sworn.**—Have heard N. P. Knapp say on the day before the Crowningshields were arrested, at my office, that there had been a number of circumstances concerning the robbery unpublished—he said that just before they were starting they had some baggage—Francis said he would take his sword-cane as he might be attacked, and made a parade of taking his pistols, but did not.

A few days after the murder, N. P. Knapp said that he was in his own office, went down about 10 to see Mr. Waters—as he was going down, or else in returning on one occasion saw the light.

I asked why Mr. Colman went, he stated that Colman was an intimate friend, that he married Jo, and was very intimate with them—that he went to Jo's cell, and Mr. Colman was in, that he wanted to go in, and Jo. said he was engaged—that when he went in Jo. had been telling Mr. Colman every affair—and he told Mr. Colman that he must go and tell Francis all about it. They then went to Francis's cell—they told Joseph that Francis was going to confess—reason was Joseph had a wife and family, and he might get a pardon afterwards—I asked what question Colman asked, if any of Francis—he said he asked some and Francis answered—don't remember the question—He said confession could do no harm, as they had evidence enough to convict Dick as principal.

Messrs. Shepherd and Treadwell, both of whom contradicted the testimony of J. J. Knapp, Senior.

**STEPHEN BROWN, sworn.**—Live in Danvers—in April lived in Lynnfield, a part of the time lived at the Hotel—Palmer was there on Wednesday before Fast—came there in the morning, at half past nine—did not see him when he come—staid till Saturday afternoon, or Friday—I saw him on Saturday again there, between seven and eight o'clock—when he came into the bar-room.

**ELIZABETH BENJAMIN, sworn.**—Remember the night Capt. White was murdered—must have made the bed of Francis Knapp or should have remembered it—he came down as usual next morning—I went to bed about nine—Mr. Phippen Knapp was not in bed that night—saw him next morning in the keeping-room writing—his brother Samuel sleeps with him—I got up about five—heard of the Wenham robbery—remember Francis and Joseph's going out that night after dark—don't remember to have seen

N. P. Knapp—did see Joseph and Francis—when I came down in the morning, Phippen was writing—shutters not open.—

The evidence here closed on both sides. Mr. Dexter commenced the closing argument for the prisoner. The publisher intended to have inserted a portion of the ingenious and learned argument of Mr. Dexter; evidence in the case already occupying so large a space we have been compelled to omit it.

MR. WEBSTER began to close the case, on the behalf of the government, immediately afterward, and continued his address to the Jury till the Court adjourned, at one o'clock. He defended the Committee of Vigilance, and the citizens of Salem at large, from the imputations which he said the learned counsel on the other side had attempted to cast upon them for the interest they had taken in bringing the perpetrators of so atrocious a crime to justice. A great occasion had been made for the display of sentimentality, of the circumstances that rewards had been offered, that a committee had been chosen, and that a special session of the Supreme Court had been appointed by the legislature for the trial of the offence,—of which legislature it had been said that one of the legatees was a member. But there was nothing uncommon or improper or uncommon in all this. In the case of Maj. Goodrich, not only was a large reward offered, but it was raised by subscription, and a committee was chosen to attend to the subject. And as to the special session of the Court, it was a matter of absolute necessity; as without it, it would have been impossible to try the culprits at all, the law requiring a majority of all the Judges to be upon the bench in every capital case, and the engagements of the court precluding the possibility of their being together a sufficient length of time during any regular term, in this county, for the next three years.

Much that he thought gratuitous and uncalled for, had been said on the other side, with respect to the employment of extra counsel on the part of the government, as if it were an unprecedented thing; but nothing was more common in cases of importance. It was done in the very he had just referred to, that of Maj. Goodrich's Robbery. The respected head of the Boston Bar, Mr. Prescott, had been called in on that occasion to aid the government in the prosecution; and in that case the counsel on the other side had occupied themselves rather in refuting his arguments than in carping at his presence.

The Jury had been told that they were placed there to shield and protect the innocent. And so they were. But it was the innocent man who in the peace of God was reposing, at the proper season of rest, in the recesses of his own house, in his own bedchamber, that they were called upon to protect in this case.

An attempt had been made to arouse their sympathy for the prisoner, and their indignation against those who had succeeded in detecting him, as if the detection were a greater crime than the murder; as if the horror with which such dreadful and enormous guilt filled a peaceful community, were a just theme of reproach. Had the event been passed over with apathetic indifference which the gentlemen seem so much to have desired, the community would have deserved a repetition of the crime.

A very strong attempt had been made to depreciate the value of the evidence presented by the government, and it had somewhat contemptuously been styled *stuff*! It was *stuff*, indeed, but not "such *stuff* as dreams are made of." It would be his (Mr W.'s) business, to weave the same *stuff* into such a web as should demonstrate the guilt of the prisoner.

The testimony of Leighton, the young farm servant on Knapp's residence, was the first to be considered, and here it must be acknowledged, that he was not by any means a prepossessing witness. He bungled, and stammered, and hesitated; and evidently testified with the greatest reluctance. He had contradicted himself, stating at one time that he had nothing to testify, and at another that he did not want to give evidence in the case. But for all this, it was plain he had spoken the truth. Nobody pretended to intimate that his evidence had been put into his mouth by others, and it must be apparent to all, that the lad was incapable of inventing so pregnant a testimony. The few words repeated by the witness contained such a concentration of meaning as was evidently altogether beyond the reach of his powers of comprehension. "*Frank, when is Dick going to kill the old man?*" By this simple interrogatory, is clearly developed a conspiracy, comprehending no less than three persons to murder a fourth. "Truth is stranger than fiction;" had it not actually occurred, it would not have entered into the heart of man to devise such a tale. Besides, every tendency which the witness could have to falsify his testimony, must lead him to the aid of the prisoner, with whose brother he was an inmate in the same family, and for all that, appeared upon the best terms.

It had been suggested that it was very improbable such a conversation should have occurred at the time and place and under the circumstances represented. The brothers had been together several hours in the morning, and it was very improbable, it is said, that all at once, after dinner, and without any preliminary discourse, this conversation should have begun thus abruptly.— But it was no more improbable (Mr. W. said) than that any other conversation should have then taken place. Conversations were always taking sudden and unexpected turns, and so were occurrences. Nothing probably could have been more unexpected to the gentlemen of the jury, two or three weeks ago, than to be called upon to decide in this case. It was just as probable that

they would have to do it, as any other 12 men, but no more so.—Yet here they were.—However, with regard to this dialogue, abrupt as it seemed on repetition, Mr Webster was not by any means sure that these words were the commencement. The jury well knew that it was by the intonation alone that that point could be decided, and the witness was evidently incapable of transmitting that. By emphasising thus: "When is Dick going to kill the old man?" it is plainly seen, that it is but the repetition of an idea before expressed; and so it may be varied in half a dozen ways.

An attempt has been made to destroy the testimony of *Palmer*, by impeaching his character, and witnesses had been brought here from a great distance, to show that he was unworthy of credit. Mr Webster said he should not undertake to defend him. He had been convicted of an infamous crime in a neighboring State, and confined in the State Prison, and this was very much to his discredit. It was still more to his discredit, however, that he was the chosen associate and confidant of some of the conspirators in this horrid affair,—that he was the inmate and ally of the *Crownshields*. But from what sort of men did the learned counsel on the other side expect to procure evidence in such cases? The projectors and perpetrators of such crimes were not in the habit of communicating their schemes to quiet and respectable citizens, but to men whom they consider, at least, suitable coadjutors in the execution of them. *Palmer's* testimony bore internal evidence of its truth, and the only particular in which an attempt had been made to impeach it, failed completely. It was corroborated by other testimony, in such a manner that it could not be overthrown. The case however, did not depend upon *Palmer's* testimony; neither did it depend upon *Leighton's*. Deprive the government of either, or both, and it still had a perfect case.

The letter of *Palmer* to *Joseph Knapp*, and the pseudonymous letters of the latter to *Mr White* and *Dr Barstow*, which *Mr Webster* read, he considered a demonstration of the guilt of the *Knapps*. And here he was led to remark upon the folly of guilt. It seemed to be the ordinance, as well of nature as of revelation, that honesty should be the only good and wise policy. He only walks safely who walks uprightly. Guilt always stumbles. No road is smooth enough, no turnpike broad enough for the guilty man.

The writing of these letters, which was in fact tantamount to a confession of guilt, on the part of *Jo Knapp*, was an act of such supreme stupidity that it really seemed almost to proceed from a direct interposition of Providence. No other cause seemed fully adequate to account for it. No person who had seen the letter of *Palmer*, under the signature of *Grant*, threatening *Jo* and his brother *Frank* with exposure, could have had a doubt on reading the letters put into the *Salem Post Office*, that they were written

by one of the Knapp's, and that they were the guilty men. There was confession in every line, and detection in every letter.

Hon. Samuel Putnam, presiding Justice, then charged the Jury. They retired at 1 o'clock, P. M. Friday, Aug. 20, and at 20 minutes past 6, returned a verdict of **GUILTY!!!!**

In pursuance of a verdict of the Jury given on Friday 20th Aug. John F Knapp was on Saturday following, placed at the bar to receive the Judgment of the Court. Hon. Samuel Putnam delivered the opinion of the Court in a solemn and affecting manner.

It was expected by many, that a motion for an arrest of judgment would have been made by the prisoner's counsel, but no such was offered. At 9 o'clock, sentence of death was pronounced, during which time the prisoner manifested the most entire indifference; his eyes rolled not wildly in their sockets—his hands clenched not as the ear caught the words of death—no blood rushed to the cheek—no quivering of the lip—no blasphemous denunciation escaped the mouth. All was indifference and unconcern; from the commencement of his first trial, to the last moment of his sentence, and it may be said when on the very threshold of eternity, he remained unmoved by the scene presented before him.

The remarks of the Attorney General are the same as in the former trial.

## PALMER'S LETTER.

BELFAST, May 12, 1830.

*Dear Sir,*—I have taken the pen at this time to address an utter stranger, and strange as it may seem to you, it is for the purpose of requesting the loan of three hundred and fifty dollars, for which I can give you no security but my word, and in this case consider this to be sufficient. My call for money at this time is pressing or I would not trouble you; but with that sum, I have the prospect of turning it to so much advantage, as to be able to refund it with interest in the course of six months. At all events I think it will be for your interest to comply with my request, and that immediately—that is, not to put off any longer than you receive this. Then set down and enclose me the money with as much dispatch as possible, for your own interest. This, sir, is my advice, and if you do not comply with it, the short period between now and November will convince you that you have denied a request, the granting of which will never injure you, the refusal of which will ruin you. Are you surprised at this assertion—rest assured that I make it, reserving to myself the reasons and a series of facts, which are founded on such a bottom as will bid defiance to property or quality. It is useless for me to enter into a discussion of facts which must inevitably harrow up your soul—no:—I will merely tell you that I am acquainted with your brother Franklin, and also the business that he was transacting for you on the 2d of April last; and that I think you was very extravagant in giving one thousand dollars to the person that would execute the business for you—but you know best about that, you see that such things will leak out. To conclude, sir, I will inform you, that there is a gentleman of my acquaintance in Salem, that will observe that you do not leave town before the first of June, giving you sufficient time between now and then to comply with my request; and if I do not receive a line from you, together with the above sum; before the 22d of this month, I shall wait upon you with an assistant. I have said enough to convince you of my knowledge, and merely inform you that you can, when you answer, be as brief as possible. Direct yours to CHARLES GRANT, Jun. of Prospect, Maine.









3 2044 019 037 472

