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# JOHN P. PHAIR:

A COMPLETE HISTORY OF

VERMONT'S CELEBRATED MURDER CASE,

CONTAINING

A REPORT OF THE TRIAL AND CONVICTION FOR THE MURDER  
OF ANN E. FRESSE, AT RUTLAND; THE HEARING ON  
EXCEPTIONS; THE SENTENCE; "DYING STATE-  
MENT;" TWO REPRIEVES; LEGISLATIVE  
PROCEEDINGS; PETITIONS FOR  
NEW TRIAL, AND FINAL  
EFFORT TO STAY  
EXECUTION.

*Compiled from the Stenographer's Report and Official Records,*

BY

E. C. CARRIGAN,

CORRESPONDENT OF THE "BOSTON JOURNAL."

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VERMONT'S CELEBRATED MURDER CASE,

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A REPORT OF THE TRIAL AND CONVICTION FOR THE MURDER  
OF ANN E. FREEZE, AT RUTLAND; THE HEARING ON  
EXCEPTIONS; THE SENTENCE; "DYING STATE-  
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## PREFACE.

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The following report of this extraordinary case has been compiled from the stenographic report, official records, and from the best available sources of information. It has been necessary to condense somewhat, but the substantial part of the testimony of every witness is given. The proceedings at the trial, and on the final petition for a new trial, are given as fully as space would permit. It is believed that the writer has given within comparatively brief limits, and at a price that will place it within the reach of all, a substantial and accurate report of this case, which, both in fact and law, is one of the most remarkable that ever occurred.

E. C. C.



# TRIAL OF JOHN P. PHAIR.

## CHAPTER I.

### THE TRIAL.

#### PRESENT.

WHEELER, . . . .	<i>Justice Supreme Court.</i>	}	<i>Court.</i>
WHEATON, . . . .	<i>County Judge.</i>		
HOLLISTER, . . . .	“ “		
E. J. ORMSBEE, . . . .	<i>State's Attorney.</i>	}	<i>Counsel for State.</i>
COL. C. H. JOYCE, MARTIN G. EVERTS, WALTER C. DUNTON,			
COL. W. G. VEAZEY, D. E. NICHOLSON,		}	<i>Counsel for Respondent.</i>

### INDICTMENT.

Be it Remembered, etc., That John P. Phair, of Rutland, in the County of Rutland and State of Vermont, on the ninth day of June, in the year of our Lord one thousand eight hundred and seventy-four, at Rutland, in the County of Rutland aforesaid, with force and arms in and upon one Anna Freeze, in the peace of God and this State then and there being, did make an assault: And that the said John P. Phair, with a certain axe, the said Anna Freeze then and there feloniously, wilfully, and of his malice aforethought did strike, and bruise, and cut, giving to the said Anna Freeze then and there, with said axe, in and upon the front side of the neck of the said Anna Freeze, one mortal wound, of which said mortal wound the said Anna Freeze then and there died instantly. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say that the said John P. Phair, the said Anna Freeze then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary, etc.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said John P. Phair, of Rutland, in said County of Rutland, on the ninth day of June, in the year of our Lord one thousand eight hundred and seventy-four, at Rutland, in the County of Rutland aforesaid, with force and arms, in and upon one Anna Freeze, in the peace of God and this State then and

there being, did make an assault; and that the said John P. Phair, with a certain sharp instrument, the name and particular shape and size of which is to the Grand Jurors unknown, the said Anna Freeze then and there feloniously, wilfully, and of his malice aforethought, did strike and stab, giving to the said Anna Freeze then and there, with the said sharp instrument, in and upon the right side of the neck of the said Anna Freeze, four mortal wounds, each of which wounds were three-fourths of an inch in length, one of which wounds pierced the neck of the said Anna Freeze so far as to puncture the muscles of the back of the neck, and three of said wounds pierced the neck of the said Anna Freeze to the bone of the neck, of which said mortal wounds the said Anna Freeze then and there instantly died. And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that the said John P. Phair the said Anna Freeze then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary, etc.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that the said John P. Phair, of Rutland, in said County of Rutland, on the ninth day of June, in the year of our Lord one thousand eight hundred and seventy-four, at Rutland, in said County of Rutland, with force and arms, in and upon one Anna Freeze, in the peace of God and this State then and there being, did make an assault; and that the said John P. Phair, with certain instruments and weapons, the name and character of which are unknown to the Grand Jurors, the said Anna Freeze then and there feloniously, wilfully, and of his malice aforethought, did strike, cut, and stab, giving to the said Anna Freeze, with the instruments and weapons aforesaid, in and upon the throat and right side of the neck of the said Anna Freeze, one mortal cut, and four mortal stabs, said mortal cut extending from four to five inches in length across the front of the neck on throat, and penetrating to the bone of the neck; and said four mortal stabs being on the right side of the neck, one of which extended to the muscles in the back of the neck, and three of said mortal stabs penetrating to the bone of the neck, each of said four mortal stabs being three-fourths of an inch in length, of which said mortal wounds the said Anna Freeze then and there instantly died; and so the Grand Jurors aforesaid, on their oaths aforesaid, do say, that the said John P. Phair the said Anna Freeze then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary, etc.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said John P. Phair, of Rutland, in said County of Rutland, on the ninth day of June, in the year of our Lord one thousand eight hundred and seventy-four, at Rutland, in said County of Rutland, with force and arms, in and upon one Anna Freeze, in the peace of God and this State then and there being, did make an assault; and that the said John P. Phair, in some way and manner, and by some means, instruments, and weapons to the Jurors unknown, then and there feloniously, wilfully, and of his malice aforethought, did strike, cut, stab, and

gash, giving to the said Anna Freeze then and there, in manner and form aforesaid, in, across, and upon the neck and throat of the said Anna Freeze, divers mortal wounds, of which mortal wounds the said Anna Freeze then and there instantly died; and as the Grand Jurors aforesaid, on their oaths aforesaid, do say that the said John P. Phair the said Anna Freeze then and there, in manner and form aforesaid, wilfully, and of his malice aforethought, did kill and murder, contrary, etc.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said John P. Phair, of Rutland, in said County of Rutland, on the ninth day of June, in the year of our Lord one thousand eight hundred and seventy four, at Rutland, in said County of Rutland, with force and arms, in and upon one Anna Freeze, in the peace of God and this State then and there being, did make an assault, and that the said John P. Phair, in some way and manner and by some means, instruments, and weapons to the Jurors unknown, then and there, with like force and arms, feloniously, wilfully, and of his malice aforethought, did beat, bruise, strike, cut, stab, and thrust, giving to the said Anna Freeze then and there, in manner and form aforesaid, in and upon the head, neck, throat, and body of the said Anna Freeze, divers mortal bruises, cuts, stabs, and wounds, of which mortal bruises, cuts, stabs, and wounds the said Anna Freeze then and there instantly died; and so the Grand Jurors aforesaid, on their oaths aforesaid, do say that the said John P. Phair the said Anna Freeze then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary, etc.

The prisoner was arraigned and plead "Not Guilty."

A motion by respondent's counsel was made to postpone the trial on the ground that sufficient time had not been given to prepare the defence; but this was overruled. A motion was then made for a change of venue on the ground of certain injurious publications in the Rutland papers which had prejudiced the people of Rutland County against the respondent. This was denied, and the impanelling of the jury proceeded, and the trial begun on the 29th, of September, 1874.

Upon the impanelling of the jury, John P. Sheldon, called as a juror, on being interrogated, answered that he supposed he had, from reading accounts of the transaction in newspapers, previously formed some opinion as to the guilt of the respondent, but did not think that he had ever expressed any opinion; that if he knew his own position, he thought he was not so prejudiced but what he could try the case upon the evidence given in court. Upon this statement, counsel for the respondent claimed that he had a right to challenge this juror for cause. The Court held that this did not show good cause for challenge, and the juror was permitted to sit, to which the respondent excepted. Several other persons called as jurors, on being inquired of, answered that they had from reading accounts of the transaction at the time, formed some opinion as to the guilt of the respondent, but had never expressed any opinion concerning it, and had no bias so but that they could try the case upon the evidence given in court. Counsel for the re-

spondent claimed the right to challenge each of these for cause, but the Court overruled the claim, and permitted the jurors to sit, to which the respondent excepted.

Of these, Sylvester C. Tarbell, on being interrogated, answered, among other things as follows:—

*Ques.* Did you read the account of this matter in the Rutland papers?

*Ans.* Yes, sir.

*Ques.* Heard the matter talked of?

*Ans.* Yes, sir; considerable.

*Ques.* Did you form any opinion in regard to the guilt or innocence of the respondent?

*Ans.* I think I did.

*Ques.* Any bias or prejudice in the matter?

*Ans.* No, sir.

*Ques.* Have you expressed any opinion?

*Ans.* Don't know that I have.

*Ques.* You have no bias one way or the other?

*Ans.* No, sir.

And Aaron N. Loveland, on being interrogated, answered as follows:—

*By Respondent's Counsel.*

*Ques.* Where do you reside?

*Ans.* Pittsford.

*Ques.* About how far from here?

*Ans.* About ten miles.

*Ques.* Do you read our Rutland papers?

*Ans.* Yes, sir.

*Ques.* You read the account of this affair?

*Ans.* Yes, sir.

*Ques.* Have you formed any opinion in regard to it?

*Ans.* Yes, sir, I have — more or less.

*By the State's Attorney.*

*Ques.* Have you expressed any opinion in this case?

*Ans.* I don't recollect as I have; but still I might have done so.

*Ques.* Have you formed such an opinion (if any) as to be in the way of your rendering an impartial verdict, according to the evidence given you in court upon trial?

*Ans.* I don't know as to that.

*Ques.* Are you aware that you have any bias or prejudice in the matter?

*Ans.* I don't know that I have.

*Ques.* Have you any conscientious scruples as to finding the respondent guilty in a case where the punishment is death?

*Ans.* I think not.

*Ques.* Have you any recollection of expressing an opinion to any one, at any time, about the guilt or innocence of the prisoner?

*Ans.* I don't recollect that I have; but still the subject has been talked freely, and I might have done so.

*By the Court.*

*Ques.* Have you in your mind now any recollection of having expressed yourself as to the merits of this case, one way or the other? Do you now remember any?

*Ans.* I don't recollect now that I have; still I might have done so. As I said before, I have conversed on this subject; this case has been frequently referred to; what I might have done I can't say positively.

The following jurymen were impanelled:—

John P. Sheldon, Fairhaven.	Henry R. Clef, Middletown.
William L. Farnham, Poultney.	Daniel H. Lane, Mt. Tabor.
George Loomis, Pawlet.	Harris O. Herrick, Danby.
James H. Wood, Fairhaven.	Sylvester C. Tarbell, Chittendon.
Aaron N. Loveland, Pittsfield.	Daniel S. Squire, Clarendon.
Judson D. Packer, Mt. Holly.	Philip D. Griswold, Castleton.

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## THE CASE.

State's Attorney Ormsbee then made a brief statement of his case and the principal evidence which he expected to show as bearing against the prisoner at the bar as the real murderer. He reviewed the case from the day of the murder down to the present time; the breaking out of the fire, the finding of the charred remains of a human being in the burning building, the theory advanced concerning its identity with Mrs. Freeze, and that death ensued before burning; the arrest of John P. Phair as the alleged murderer, the facts of his having been a frequenter of her house both day and night, the discovery of goods, alleged to have formerly been possessed by the murdered woman, in Boston and pawned by one "E. F. Smith, St. Albans, Vt," the identification by parties in Boston of Phair as said Smith, and other leading features of the case as presented on behalf of the State.

The Court then proceeded to the examination of witnesses on the part of the State. The first witness called was John Jordan, of Rutland, who testified as follows:—

### TESTIMONY OF JOHN JORDAN.

Reside in Rutland, on Plain street, which leads from Forest street east to the fair ground, 60 or 70 rods east from where Mrs. Freeze lived.

On Tuesday morning, the ninth of June last, while at breakfast, noticed a woman running across the road toward Mrs. Freeze; thought something unusual was up; finished breakfast and went out doors; saw two men running in same direction; overtook them at Mrs. Freeze's house; we found front door locked, so Keenan, Westcott, Whiting, and myself went around to back door, which was unlocked, and went in; everything was all right downstairs, and we went upstairs, where we found hall full of smoke; the front-room door was wide open, and the room full of smoke; could see a little under the smoke but could not see no blaze there;

Whiting and I went down and got some water to throw on; then saw fire on the bed; saw it was no use to try to put it out there as the smoke was so thick and so stifling we could not get to the fire; we shut the door leading from the hall into the room where the fire was, and where the bed stood in a recess, and went downstairs; Whiting got a plank and pushed open a door into another room upstairs which led by where the alcove was; saw the fire raging on the partition between; got in there and called for water; they brought it, but not sufficient to put the fire out; threw the clothes out; others outside broke open the windows of the room where the bed was, which gave a draft through and cleared out some smoke; then came downstairs as heat drove us out, and helped take out furniture out of a room downstairs. The ceiling of the kitchen fell soon after, so the bed could be seen; Whiting and I took a pole to get the remains out, when they fell into the ruins; others took them on a board and took them away; saw them take the body out into the garden on a pastry-board; examined the throat and saw a cut, and called others' attention to it; remained there till the house burned down.

There was no fire below when we first got there; looked for an axe to get out the body from the upper story, but could find none; Mrs. Freeze's house was on the west side, end to the road, last one on Forest street going south; land on the west was mostly uncultivated and covered with brush, not ploughed, but used for pasture; Mrs. Freeze had about a quarter of an acre cultivated. Am acquainted with Phair; worked with him at Mansfield & Stimson's; have no knowledge of his visiting Mrs. Freeze; heard him mention her name, and have seen him in the vicinity of her house; worked at M. & S.'s when he came to Rutland; believe he came in May; did not go by Mrs. Freeze's to go to work; went past there the night before about five minutes past ten; saw nothing unusual; don't know whether there was any light there or not; saw two newspapers on the road next morning near there that were not there the night before; it was about 6.30 in the morning when my attention was first called to the fire.

The case was here adjourned for dinner, and at 2 P.M. the testimony of Mr. Jordan was continued:

Don't know as I knew of Phair going to Mrs. Freeze's but one time when he came up with me, two or three weeks before the fire. On Sunday, the 7th of June, I saw him go there about 7 A.M.; was sitting at breakfast when he passed, coming from Mrs. Freeze's house.

*Cross-examination.*—Did not see Phair come out of Mrs. Freeze's house; saw him 60 or 70 rods from there; the street I live on comes on to Forest street a little south of Mrs. Freeze's house; it was a 1½ story house, about 20 to 26 on the ground; had kitchen, buttery, bed-room, and front hall on first floor, a woodshed, but no ell; two rooms above, the back room not furnished or lathed; Mr. Keenan, another man, and little boy were at the fire when I got there; Keenan lives next house, a couple of rods; did not see Keenan go there; no fire anywhere but in front room upstairs; had been there about half an hour before got body out; the house was built in ordinary style.

*Re-direct.*—The only fire was in the back portion, and flames there at the time; the studding and lathing was ablaze.

#### TESTIMONY OF ABRAM WHITING.

Reside on Plain street, but lived about eighty rods from Mrs. Freeze's house at time of fire; about six o'clock that morning, saw a fog rising from Mrs. Freeze's house; went into the road and could not see it, so went back and ate breakfast; started for work, when I heard some one cry that Mrs. Freeze's house was afire; run that way, and overtook George Westcott; when we got to the house, found Keenan, McCarthy, and some others there; the front door was locked, so we went to the back door, and went in; five or six went in together; the back door was shut, but not locked; shed door was open; looked into the bedroom on the first floor, but saw no one, and then went upstairs; found smoke very thick; went down and got some water, and others pushed open a door, but could not get in, the smoke was so thick; then we got some ladders, and McCarthy and I looked in through the chamber window; saw the two lower limbs of a body on the bed, and they dropped to the floor while we were looking in; could see the fire, which was mostly in the partition near the bed; saw a pile of charred clothing on the body; thought if we could get an axe, could get the body out; finally, got some rails and pushed the body along, until it fell to the ground; took it out and carried it into the garden; was there while the doctors examined it; noticed cuts on the throat when getting the body on to the board; Drs. Allen and Mead were there, and some 400 or 500 persons during the time.

I work at the railroad machine shop; did not know Phair, never saw him. The house below was clear of smoke; did not notice any wearing apparel below; stayed there until the house burned down. The first smoke I saw came from the roof near the chimney; on the side of the house where the body was found; thought at first it was fog arising from damp shingles; don't know of any open stovepipe hole in the house. It was about 6 o'clock when first saw fire; about 6.20 when saw it next.

*Cross-examination.*—Was in my door when I saw the fog; not foggy there very often; clear mornings, generally; have seen foggy mornings there, two or three, last summer; the sun was coming up when I first saw the fire; would not have thought any more of it, if it had not broken out again; there were three or four there when I got there; Mr. Rourke's little boy went around to the back door and found it open. I work in the railroad machine shop; can walk there from the house in about twelve minutes, about one mile and a half; go on the railroad track from the corner of the fair ground. The foot of the bed had burned off when I saw it; the body lay on the wire netting.

*Re-direct.*—The mother of the boy sent him around to the back door; don't know the boy's name.

#### TESTIMONY OF CHARLES McCARTHY.

Reside on Forest street, east side, some 80 rods north of Mrs. Freeze's house; on morning of fire, about 6.20, saw smoke arising

from Mrs. Freeze's house; ran over and cried fire as I passed Mr. Keenan's; went to the house and rang the bell; Pat Rourke came next; tried the door and found it locked; Mrs. Rourke then sent her boy around to the back door; he returned and reported, and Whitney, Jordan, and myself went around and into the house; went upstairs; believe I was the first in the house; found no smoke below only a little in the hall; saw Mrs. Freeze's hat on the rack; brought down carpet from upstairs; could see under the smoke about a foot; no fire on the floor; the furniture in the room seemed in order; then went downstairs and helped to take out furniture there; went to get my ladder and put up to the window and saw body on the bed; lower limbs fell to the floor; could not stay long for the heat; then went to help keep the fire from Mr. Keenan's house.

Did not know Phair; saw him Thursday before the fire with Mrs. Freeze, in a carriage, go by my house going north; the Saturday following met him at corner of Freight and Forest streets, going on Forest street south; man with him turned off to circus ground and Phair kept on towards Mrs. Freeze's; this was about seven o'clock; never had any conversation with Phair

*Cross-examination.* — Did not know who the man was with Phair.

#### TESTIMONY OF CHARLES H. MATTHEWS.

Was at the fire at Mrs. Freeze's house about seven o'clock in the morning; they had just got the body out when I arrived; remained there till noon and took charge of the goods under direction of Mr. Franklin Billings, selectman; the goods had partly been carried out; watched the goods and helped pile them up until they were carried away; saw the remains before the doctors got there; noticed neck stabs and was there when the doctors came; all the doors on the lower portion of the house were taken off and carried away. Found a key in one of the lower doors; took it out and have kept it since, (he produced the key and it was put in as a part of the evidence); it is in the same condition as when found; the spot on the key was dry then and looked as it does now. Knew Phair when a boy and have seen him some since; never saw him with Mrs. Freeze.

*Cross-examination.* — The top of the head of the body was smashed in; not burned off; the hole in the top looked as if smashed in; took the key off the door next day but one after the fire, at Mrs. Davis'; know it was a door that came from the house as I saw them took from the hinges; believe this was after the reward had been offered.

#### TESTIMONY OF PATRICK ROURKE.

Am fifteen years of age; John Rourke is my father; lived with him across the road from Mrs. Freeze's at the time of the fire; heard Mrs. McCarthy crying fire; went over there and found Mr. and Mrs. Keenan there; went around to the back door and found it unlocked; came back and told them it was open; did not know Phair; have seen him at Mrs. Freeze's; the Thursday afternoon

before the fire saw him take her to ride; the next Saturday night I saw him going up town with her.

*Cross-examination.*—Our house is opposite Mr. Keenan's, which is a little this side of Mrs. Freeze's.

#### TESTIMONY OF JOHN KEENAN.

Lived next neighbor to Mrs. Freeze, on north side, about thirty feet from the house; saw smoke coming out of the roof but did not think the house was on fire; this was ten minutes or so past six; five or ten minutes later Charley McCarthy came along and said Mrs. Freeze's house was on fire; went over and tried the front door-bell, but it would not ring; sent the boy around to the back door; he found the shed-door open and the kitchen-door unlocked; we went in but could not see any fire; went upstairs and the room where she slept we could not enter, because the smoke was so thick; came down and got things out, and then saw my own house was in danger of burning and went over there; was slightly acquainted with Mrs. Freeze; had never seen Phair there; am employed in the railroad yard; away from home during the day.

*Cross-examination.*—Have seen other men go to Mrs. Freeze's frequently; never paid any attention as to who went there; have seen them go late in the evenings; frequently have foggy mornings there; fog was rising all around that morning; don't know the size of the house; never was in the house till that morning; did not live there when it was built.

#### TESTIMONY OF GEORGE H. WESTCOTT.

Was at the fire; about 6.45 when I got there; two men there then. [The remainder of his testimony corroborates that of the other witnesses who were at the fire, and develops no new facts.]

#### DORA A. WILSON

was the next witness, who testified as follows:—

Lived from the 5th of January last to the last day of March with Mrs. Freeze. There was a kitchen, bedroom, and parlor on the first floor; upstairs a front chamber and back room, with closet off from front chamber; bed was in the south-east corner of the room; clothes-press was over the hall; alcove in back part of front room and bed stood in that; this was her lodging-room. No one else was living with her but myself. She had a hatchet and kept it under the shed; was familiar with all her goods; she had no razor there; she had a watch and chain and three rings; one ring was a chased, the other a cameo, and the other I know nothing of; the chased ring she wore always, as she could not get it off; had about one hundred dollars with her generally; the watch was gold with a chain attached; the chain was a long one with a cross on it that could be used as a key. Had a part of a shawl which she gave me; it was whole when I went there and I cut it in two and took my half home to Vergennes; a star on it near the middle was on her half; it was black with Paisley border (shawl produced here, in both parts). This is the shawl. She kept her watch in her second bureau drawer; she had a case, a rosewood stained dark. (The

watch, chain, case, and rings, produced and indentified by witness as those formerly belonging to Mrs. Freeze.) When I left last March she had another shawl similar to another here produced. She had six teaspoons and three table-spoons, marked "A. E. Stover."

*Cross-examined.* — Used to help Mrs. Freeze do her work and used to count her silver; never heard her mother say anything about it; I testified before she did at the inquest. The rings look like those she had; think I should know them as I have seen her wear them; never saw any like them; no particular marks on them; never saw any other watch like hers; she spoke of having two diamonds out; she kept it in her second bureau drawer; did not keep it locked; kept the case on the top of the bureau; never noticed the number of the watch; remember particularly about the cross and key; never saw any other of the same kind; the watch being enamelled is noticeable on that account; saw it at the inquest; Mrs. Davis, Mary Delphy, Mrs. Keenan, Mr. Thornton, Mr. Field, and Mr. Crawford were present; did not hear them say anything about it; Mrs. Davis had never noticed the diamonds.

Mr. Thornton came to Vergennes and told me they had got the other half of the shawl and wanted my half; I gave it to him; Mrs. Freeze kept the half with the spot on it, as she said I should wear mine more than she would hers; Mary Delphy does not know of the shawl; Mrs. Freeze had a wine closet in her room; never saw any wine there, but she called it a wine closet; was acquainted with her about a week before I went there; met her in Rutland while stopping with Mary Delphy; gentlemen were not in the habit of calling at Mrs. Freeze's; saw some there, but no more than at other houses; none stayed all night; went home very early, and were never allowed to stay long.

#### DR. CHARLES L. ALLEN,

of Rutland, testified: Am practicing physician and surgeon in Rutland; was called upon by Mr. Billings, the selectman, to examine the remains supposed to be those of Mrs. Freeze, and went in company with Dr. Mead. We found remains lying on a board, and at first they seemed but mere charcoal, but upon examination found some parts not entirely destroyed. The limbs were entirely gone excepting a portion of one thigh-bone attached to the pelvis. The body generally was present, the head charred and skull gone; apparently the skull-bone was broken since burned; the forehead all gone down to the eye-brows; fragments of roof still there; the tough membrane had contracted and compressed the brain, while a rent was made through which a portion of the brain protruded; rent was produced after death; eyes completely burned out; nose considerably so and jaws destroyed. The face was that of a female; no beard present; small mouth, oval face, hair so crisped that its character could not be determined. The neck was simply blackened; the whole body warm like cooked meat. As we raised the chin saw a long gash across the throat three or four inches, dividing windpipe; the muscles of the neck and blood-vessels on the right side severed; along on the neck were four openings

through the skin, apparently made by a sharp instrument; traced one that ran behind the bones of the neck, the others struck against the bones of the neck; we traced for the purpose of finding whether the wounds were made before or after death; the wounds on the neck were produced before death, as there were no evidences of blackening, but there were spots of blood, showing they bled; the large gash was made evidently before the fire, as the whole surface was black; on opening the chest and tracing the windpipe, the inner surface of it was a pink color, simply moistened, whereas the whole inside would have been red, swollen, and wet if the wounds were produced before burning; persons' lungs that inhale smoke would not present as healthy appearance as these did; there was an entire absence of inflammation or burning; found the lungs collapsed and bloodless; the heart also evidently drained of blood anterior to death; the blood-vessels had more or less blood in them, whereas fire cuts off the escape of blood necessarily and prevents blood from running; there is no question but that the person died before burning; the wound across the neck extending back to the bone showed marks of an instrument upon the bone; the teeth as a mark of identity were noticed, and those present and absent were noted down; one of the incisors on the upper jaw was gone and its place was taken by a false tooth; there was a fracture through the jaw which broke in the setting; took it out and have it here; has been in my possession ever since until yesterday, when I showed it to Dr. Lawton.

The large gash was sufficient to produce death; the others would not; there were several other indications than absence of beard that showed the sex — shoulders, breast, and waist.

*Cross-examination.* — The large gash could not have been made by a razor; the others might have been; the marks on the bone show they could not have been made by a razor; blood flies considerably when such wound is made, and a person near would be apt to get blood upon him, although he might not. I examined the clothes of respondent some days after his arrest, very carefully, and found nothing that would indicate a suspicion of blood on them; they were light gray clothes, brought to me by N. S. Stearns; found a little spot on them, but it was not blood; there was no evidence of *ante-mortem* wound upon the head; if a person was lying on the left side of a bed, the blood would fly away from a person standing on the other side; the bed was in a recess; if in bed she must have been on the left side to have received the cuts made; have been in the room several times.

The question as to the reputation of the house was objected to by the counsel for the State, but allowed as admissible.

Have heard sneers against the house, but nothing very definite; never heard it called a house of prostitution; could not tell definitely what I have heard; something to the effect that she made money fast without work.

*Re-direct.* — When visiting there professionally found the bed in the recess and the back of the bed against the partition, I think.

## DR. JOHN A. MEAD

was the next witness called, and corroborated fully, by clear statements, the testimony of Dr. Allen.

The instrument produced I think might have made the punctured wounds. This instrument looked like that used by physicians in making *post-mortems*.

## DORA A. WILSON

was recalled and testified: Bed took up the entire recess and set back against the wall. (Instrument produced.) Never saw anything like it there; think I should have seen it if one had been there; she had no heavy paper-cutter or anything else answering this description.

*Cross-examination.* — Mrs. Freeze had no butcher-knife and no sharper knife than a case-knife; I was boarding there and did some work; paid \$5 a week for board.

## DR. LEWIS T. LAWTON,

of Rutland, was the last witness and testified: Am a dentist in Rutland; had occasion to treat Mrs. Freeze during her lifetime; she came to my office for work on her teeth; only work done for her was a plate made three months before her death. It was a front central tooth on the upper jaw (tooth and setting produced). This is the tooth and its setting. In putting up sets of teeth, no two dentists work alike, or in making plate of this kind; in making such a plate I always clasp it around.

*Cross-examination.* — Presume likely there may be others that do it the same; of course there is some similarity between them; all use same material.

*Re-direct.* — Have no doubt but that this is the tooth.

The court then adjourned until 9 o'clock Wednesday morning.

## SECOND DAY'S PROCEEDINGS.

The testimony on behalf of the State in the case of John P. Phair, charged with the murder of Mrs. Anna Freeze on the 9th of June last in Rutland, was continued Wednesday. The court-room was well filled throughout the day.

## TESTIMONY OF EDWARD T. BARNARD.

Reside in Vergennes; lived in Rutland last summer; have known Phair a number of years; knew Mrs. Freeze in her lifetime; was with her and Phair twice; can't tell the times; we were in the parlor in her house; went there with Phair; he told me he had been there before I was there; I was there with him between one and two weeks before the fire; I went and came with him; it was in fore part of the evening; saw him Sunday before the fire about noon; he came up to my boarding-house to see me; we went to West Rutland alone in a team; had it of George Richardson; we got back about 6; I left him at the Berwick Hotel; I paid for the team as he said he was short; I was boarding at Hoffneckle's, on Centre street.

*Cross-examination.* — Came to Rutland in middle of May; he told me before I came to Rutland that he was going to Boston; he told me so a number of times after I came here; I told him to get me a bottle of brandy if he went; he was in the habit of sleeping with me at my boarding-house.

#### TESTIMONY OF EMELINE HARDY.

Reside on Forest street in Rutland; knew Mrs. Freeze; I saw her Monday before her death between 4 and 5 P.M.; she passed my house going towards the village; I had a talk with her as she stood by the gate and I stood on my doorstep; I knew the time because I was getting wood to make a fire to get supper for a boarder who was to come on the 5 o'clock train; I saw her Friday in Perkins' store; she was buying things; she had a hundred dollar bill, a fifty dollar bill, and two or three twenties; saw her go by Thursday in a carriage with a man. I did not see her Monday afternoon when she went back home; she came by my house to get to the village; my house is No. 33; used to see her pass frequently; I was never at her house; she had a shawl on her arm Monday when I saw her at my gate; had seen her wear it frequently; I know it was Monday; I was barefooted; she spoke about it; I had a large number at my house through the circus.

*Cross-examination.* — It was Friday before her death that I saw her at Perkins' store; I saw her have the money; she rolled the bills over her fingers; we left the store together and she went towards her home; I testified before Justice Everts at the inquest; said nothing there about the money; they did not ask me; I have spoken about it to my sister, not to anybody else who had anything to do about this case; I spoke to her about her having such a sum of money about her; have had about 16 boarders through the summer; they were men employed on the railroad.

#### TESTIMONY OF MRS. CATHARINE DAVIS.

Reside in Rutland, on Elm street; Mrs. Freeze was my daughter; I last saw her the Thursday before her death at the depot; she was there with relatives and they were going away; they came on Monday and I went down there in the afternoon and also on Tuesday; her cousin staid with her and her aunt with me; it was a mother and daughter; her name before she married Freeze was Stover; I have seen her new shawl twice; saw it when she came to my house on Wednesday, also when I saw her at the depot; I examined the shawl and we talked about it; I know she had an opera-glass; we spent considerable time in looking through it; the first time I saw it was when I was down there with relatives; I had the glass in my hands; put the glass in the case and laid it on the bureau. (Shawl produced). I should say that was the same shawl. (Opera-glass produced). That is the same thing she had and that I looked through; she fixed it for me to look through; I had never looked through one before; I knew her watch; she had had it some time. (Watch and chain produced). This is her watch, I know; she had a case to it similar to the one produced.

*Cross-examination.* — Mr. Freeze died in 1867; he had a razor

and I have it in my house ; I don't know how I came by it unless it was Freeze's ; I am one of the heirs of Mrs. Freeze's estate ; it looks like the shawl and opera-glass which belonged to her ; she always kept the watch in her possession as far as I know ; I first saw the key about a year ago ; she got the chain since she got the watch ; the key is in the cross ; I never saw one like it before ; I saw this so many times that I knew it ; am 65 years old.

#### TESTIMONY OF JOHN FOLEY.

Live in Rutland ; work at Mansfield & Stimson's ; Phair worked there with me in the same room ; worked on the same job ; I was twitting him of riding out with Mrs. Freeze ; he told me how rich she dressed and how stylish she was, and what a little Dolly Varden she was, etc. ; saw him at the circus with her and met him going to her house oncè ; never spoke of her money ; only her good clothes and jewelry ; Friday evening before the fire was the last time he worked ; last evening I saw him was circus-evening, Saturday ; saw the fire but didn't go to it ; Phair said he was not going to work at the business longer ; seemed to tire him to wait till six o'clock ; said he was going into other business.

*Cross-examination.* — He said he did not like to work ; never saw a man dislike to work as much as he did ; told him he ought to be ashamed to ride out with Mrs. Freeze, because I should not want to ride with her in daylight or dark ; she had a bad name and the reputation of being a prostitute ; have known her about nine years ; Phair did not work circus-day ; saw nothing of him until evening ; he didn't say what other kind of business he was going into ; the shop was open that day ; don't remember how many worked ; some went to the circus.

#### TESTIMONY OF BESSIE GAUGHAN.

Live in Nebraska ; worked at the Berwick House the last summer ; knew Phair ; he boarded there ; was table girl ; was at the circus in June last and saw Phair there ; he had a lady with him, but could not say who she was ; never saw her before ; had nothing to do with Phair's room or bed.

#### TESTIMONY OF MARGARET BARRY.

Live at Berwick House, and was there in June last ; knew Phair and saw him at the circus ; am dining-room girl ; had a lady with him ; did not know her ; spoke with her but not introduced ; small person ; couldn't say how she wore her hair, and don't remember how she looked.

*Cross-examination.* — Went home Sunday evening after circus, after supper, and did not come back till Monday morning.

#### TESTIMONY OF WM. H. PRESTON.

Live in Rutland ; am baggage-master on R. & B. Railroad ; on 3 and 4 mixed accommodations out of here at 4.30 A.M., for Bellows Falls ; remember burning of Mrs. Freeze's house ; am acquainted with John P. Phair ; have known him for years ; he went on my train to Boston that morning ; saw him five minutes before

starting ; he came up to train and said he was going down on train that morning ; then saw him when we got to Summit ; he came into baggage-car and stayed till we got to Ludlow ; talked on railway affairs ; saw him at Bellows Falls and conversed with him ; saw him next at Keene ; he was on platform ; next saw him at or near West Fitchburg ; last I saw of him on trip ; next saw him in court-house at examination after his arrest. He was dressed in light-colored suit, light felt hat and black band ; he is a cousin of mine.

*Cross-examination.* — Rode from Summit to near Ludlow with me ; noticed nothing unusual in his appearance ; a week or ten days before he spoke of going down country ; said he was working at heavy shafting, and said he was going to the screw factory ; talk was at the Berwick House ; time I saw him at depot is mere estimate ; takes five minutes to sort my papers, and he came up about that time.

#### TESTIMONY OF JOHN WILSON.

Was railroading in June last on Nos. 3 and 24 ; mixed train out and accomodation back ; went out on that train but was not working on it that morning ; went from Main down through Centre street to Berwick House ; a man came out and spoke of train time ; spoke of Preston, and talked freely all the way to the depot ; think he had a satchel, but wouldn't be certain ; it was about ten minutes to four when I got to the Berwick ; he stepped down from the steps and spoke to me ; I had my lantern and dinner-pail ; did not notice him again ; he turned and went into the gentlemen's room at the depot ; that was the morning of the fire, as I went right over to the scene when I got back from Ludlow ; the man had a moustache, goatee, wore light clothes and hat with black band. (Prisoner identified.)

*Cross-examination.* — I walked down from Berwick House with him ; saw nothing unusual in his appearance.

#### TESTIMONY OF A. R. HOWARD.

Reside in Rutland ; in June last was in restaurant in depot ; remember the day that Mrs. Freeze's house burned, but cannot the day of week and month ; was there before the 4.30 train left that morning ; did not know John P. Phair at that time ; I could not tell whether he was there that morning by seeing him since ; a man came in and sat down by the cigar case and ordered steak ; said he did not think he had time to wait for steak, but a man on the Rensselaer and Saratoga Road setting near said he had plenty of time ; so he ate the steak, paid for it and went out ; should not have noticed it afterwards had not my attention been called to it ; prisoner looks like the man ; could not say positively that he was the man ; he had on felt hat, I think, and business coat ; he came in there about ten minutes or quarter past four.

*Cross-examination.* — He ate his breakfast where I had opportunity to see him ; don't know how many others took breakfast with him ; Mr. Moon, the Rensselaer and Saratoga baggage-master who was with him, is in town.

## TESTIMONY OF J. C. THORNTON.

Knew Mrs. Freeze in her lifetime ; did not know Phair by sight before her death ; Monday afternoon before her death saw her for the last time ; she went past my store ; what called my attention to it was that Pat Kelly spoke of her being at the circus ; she went up street ; did not see her return ; was at the scene of the fire about 10 o'clock ; it had burned down when I got there ; have had something to do in looking up this case ; I took Phair down to Nichols gallery and had photograph taken ; that was the 11th of June ; N. S. Stearns was with me ; we tried to get the number of watch next day before going to Boston ; understood that it had been fixed at Marshall & Cady's ; boy could not find it but promised to send it to us at Boston ; we left for Boston on the 12th, at 4.30 in the morning ; we went to find property belonging to Mrs. Freeze ; went first to chief of police, and next day Mr. Gould, superintendent, went with us to pawnbrokers ; in meantime had got number of watch ; went to a number of pawnbrokers ; finally got to Mr. Abraham's (watch and chain produced) ; this was found there ; number of watch corresponded to the number that had been given ; think also maker's name ; watch was in the case ; this one produced is the one I think ; broker's office of Abraham was on Salem street ; ascertained of Mr. Abraham where claimed to have stopped ; went to Adams House that same day ; Mr. Stearns and son went with me ; Stearns' son since died ; found a half shawl at the Adams House ; got it of the clerk ; think his name was Donovan (shawl produced) ; this is the half shawl found there ; identify it by a spot on it ; kept shawl with us and brought it home ; sought for the duplicate and found it at Vergennes of Dora Wilson, the woman who formerly lived with Mrs. Freeze ; made a further effort in Boston after finding the watch and shawl ; went again about a week afterwards ; Mr. Stearns went with me to look for further property ; found a Paisley shawl and opera-glass at J. G. Pierce's, 25 Howard street ; don't remember of the day of month in which we found them (opera-glass and shawl produced) ; those are the same as found there by us ; we brought them home with us ; went to Boston a third time ; three weeks after first going ; got three rings this time at Samuel Elrich, on Washington street (rings produced) ; those are the rings ; I brought them home with me ; found no other property ; thought I had seen the shawl before when I saw it at Boston ; first saw Phair after his arrest on the 11th of June.

*Cross-examination.* — Don't recollect that any one said to Phair that it would be better for him if he would tell the whole thing.

*Re-direct.* — Told us he went to Providence to hire out in the screw factory ; did not see any of the proprietors, but saw one of *employés*, who said business was dull and so he did not apply ; some one asked him where he got his money and he said he borrowed the money, \$20, of an apple-tree man ; Stearns asked him the fare to Providence, and he said \$3.25 each way ; don't recollect of his saying anything about stopping in Boston ; said he was going to Vergennes ; he had bought a ticket to Vergennes ; said he expected to make some payments on property at Elizabethtown,

N.J.; he said he had fixed on an early day to go there; don't know the amount he was to pay; he said he had been at Mrs. Freeze's; said he first learned of the murder when Crawford arrested him; Stearns then asked him if a paper was not shown him; then he corrected himself and said he had made a mistake; the printer had shown him a paper on the train before that; said he borrowed the money a week or so before; I saw them at a circus together; don't know as I had any conversation with him as to the contents of his valise.

*Cross-examination.* — We took him down to have a photograph taken, 11th of June; took his photograph with us to Boston; got there at 3 P.M.; we went to the chief of police first; told our business and of the murder; showed the photograph to the chief of police; told him what we thought was necessary. He gave us Mr. Gould to look the matter up, and started out the next morning; showed Mr. Abraham the photograph after he had described the man; told him of the case; think we did not tell him of the reward; will swear I did not; Mr. Stearns and son were with me; am interested in this reward; don't know how many are interested in the reward; found the shawl and opera-glass on the second trip; don't recollect whether Mr. Gould was with us or not; about three weeks after the first trip made efforts to find the money, and went to the express office and found one package going to Elizabethtown, N.J., and I traced it, but nothing concerning Phair; had several talks with Phair, in jail and elsewhere; I have talked with him in his cell on different occasions; can't say when I had such talks; don't know as I have said to him that it would be better for him to tell the whole story; tried to find out all I could but held out no inducements; told me of his trip to Boston and from the Providence depot; he said that Mr. Stewart rode with him to the Providence depot; he said that the fare to Providence was \$3.25; Stearns asked him if it was that each way, and he said yes; I swear that I remember he said so; said he was going to Vergennes; said he was going to make a payment at Elizabethtown, N.J.; did not ask him how he expected to pay it; knew what money they found on him when arrested; he said he was first informed of the murder by Crawford, and then corrected himself and said a printer showed him a paper with an item about it; it was raining at the circus, but don't remember it Sunday; think we had half-a-dozen each of photographs taken — Mr. Stearns and myself; gave some of them away and have got some of them; left one at Boston and had one with us whenever we went there.

*Re-direct.* — Think Stearns was asking how he made out his money, and reckoning up how much he had spent. He persisted in wagon that he heard of murder of Crawford. After we had talked so as to make sure his mind was clear on the subject, Stearns then asked if the man did not give him a paper concerning it, and he then said yes; that he had made a mistake.

#### TESTIMONY OF N. S. STEARNS.

Reside in Rutland; have interested myself in the investigation of the matter now on trial; was at the fire soon after the remains

were taken out of the fire with Sheriff Field; was acquainted with Mrs. Freeze, and don't know as I had seen her for some days before her death; knew Phair by sight; hearing some remarks of suspicion against Phair, I first went to Vergennes the next day after the fire, and returned home the next evening; parties at the depot told me they were going to take the train south, and returned at 1.40 with the prisoner; met them at the depot and went with them to Berwick House, and from there to jail; had a conversation with prisoner in presence of Crawford, Matthews, and Von Nieda, and the clerk at the Berwick; was present when the baggage was searched; it was done at the Berwick House; he had a black valise, and in it were two boxes of collars, pair of suspenders, necktie, shirt, pair of stockings and two bottles labelled brandy; the one produced is the same valise; the shirt he claimed he brought with him from Vergennes; it had not been worn; couldn't tell the name of the man he purchased it of; he said he had been to Providence; from Boston to Providence and returned same night; went there to apply for work; inquired if he had made application for work; he said he did not, that business was dull and manufacturers were turning off help, and he did not apply; his present work was heavy, and he wanted lighter work; undertook to locate his stopping-place in Providence; said he took his meals at a restaurant and stayed at a lodging-house, and subsequently said what direction he went from the depot; went down the street, and the restaurant was on the left side of the street; he described it somewhat, and referred to the circumstance of his presenting a fifty-cent scrip, which the clerk refused at first to accept, but finally accepted it; the lodging-house had a blue sign and white letters, "Board and Lodging." In regard to expenses he was inquired of where he got his money to make the trip; he said he borrowed \$20 of Mason, dealer in apple-trees; inquired of as to the fare from Boston to Providence; he said \$3.25; said the same fare back to Boston; then asked if that included to Vergennes in the \$5.25 from Boston to Rutland; he said it was some additional; in figuring up, with his account of himself, the money he had spent, it exceeded the \$20. He said he was with Mrs. Freeze at the circus Saturday night previous; said in answer that night that he first heard of the murder the night Crawford arrested him; next day, in company with Thornton and Perkins, took him to a photograph gallery; I asked him the third time about hearing of the murder, and then asked him if he did not read of it in the *Boston Journal* given him on the train; said yes, he had forgotten it.

The Court then suspended for dinner, and at two o'clock Mr. Stearns continued his testimony:—

Phair said from the time he was at the Berwick House, Sunday evening, when he played the accordeon to the girls, he went out on the street and went to bed at nine o'clock at the Berwick, and took the morning train for Brandon to the circus; stayed there during the day, and stayed at the Brandon House to supper; was acquainted with Mr. Deming, the proprietor; returned at midnight, and that Oliver J. Cain was on the train coming down, but didn't

speak to him ; stayed at the Berwick over night and took the morning train for Boston ; claimed that he should have gone right along to Boston, but stopped for his baggage at the Berwick ; he said he stayed at the Berwick in the room he usually occupied ; this conversation occurred the night of his arrest and also next day ; there were present that night, Matthews, Crawford, and one or two others at the Berwick ; next day made the same statement ; was present when the baggage was examined, and have stated what it contained ; he had a trunk which I examined in the room next day ; found shirts, stockings, razor-case and shaving-cup, but no razor ; there was \$5.65 found in his vest pocket when searched ; had no wallet or purse ; I went to Providence and followed indications described by him as places where he said he stayed while there ; had James O. Swan, a detective there, to assist me ; were not able to find the boarding-house represented by him as the place where he stayed ; we went to the saloons and lodging-houses in the vicinity he described, and could find nothing as he described in that vicinity ; I went through that vicinity and could find no sign as he described there ; Swan was in company with me.

Went to Boston on the 12th of June, on 4.30 A.M. train, and arrived there about 2 P.M. ; Mr. Thornton went with me ; we went in pursuit of property described to us as being Mrs. Freeze's property as liable to be carried away ; got a description of watch, dresses, shawl, jewelry, etc. ; Saturday afternoon found watch at 18 Salem street, in possession of Mr. Abraham, broker ; chain, watch and case entire (produced watch, chain, and case). This is the property found ; it has been in my possession most of the time ; has been locked up in the safe in the post-office in a valise some of the time ; learned from whom he obtained the watch ; learned where the party from whom he got it claimed to be stopping ; went then to Adams House ; found a shawl there (produced shawl) ; that is the shawl we got at the Adams House of the clerk, John Donovan, Jr. ; shawl has been in my possession since ; afterwards found a shawl and opera-glass at James G. Pierce's, 25 Washington street (shawl and opera-glass produced) ; these are the articles we found at Mr. Pierce's ; this was the next week Tuesday, after the fire ; afterwards found three rings at pawnbroker's shop on Washington street (rings produced) ; those are the same rings ; at S. Ehrlich's shop ; rings have been in my possession since that time ; asked Mr. Phair at the jail to write his name on paper ; he did so ; he then wrote "E. F. Smith, St. Albans" (writing produced) ; that was wrote by Phair in my presence.

*Cross-examination.* — The store of Ehrlich was a pawnbroker's shop ; don't know what nationality, but was a foreigner ; Pierce's was a pawn shop and second-hand clothing store ; Abraham's was a pawnbroker's shop ; think Abraham was a Jew ; don't know the number of inhabitants in Providence ; think it is more than 5,000 ; may be more than 100,000 ; think there is a screw company ; got the description of lodging-house first in Providence and afterwards of Phair ; have been at Providence at three different times ; searched for those places in the vicinity of the depot ; Phair told

the direction from the depot he took and also described the restaurant where he took his meals; had a sign, blue with white letters, "Board and Lodging;" think he said he bore off to left from the depot; back of the depot is a bay or body of water; in front is business places; told me this after I had been once to Providence; I came out on the side of the depot as we came in from Boston and passed out to the left; at subsequent talk with Phair I asked if he did not go to the right to find this saloon and lodging-house; think he might have said about the body of water but don't recollect it; he described the manner of going out the depot; found a large number of restaurants and lodging-houses in the vicinity; not as often as every door; don't know as he described the appearances of the cars; I don't know as I noticed the color of the cars; I went at 2 o'clock from Boston; he said he went directly from the train which he arrived on in Boston and went to Providence depot; did not say that he left about five o'clock; do not know as he specified the time the train left; don't know what time the next train left; he didn't describe the Providence depot in Boston; was at the jail frequently to talk with Phair; he has not always talked freely to me about it; he was questioned about it before telling; held out no inducement to him to make statements; I asked him what statement he could make; I think I did not advise him to make any statement; found a shaving-cup in the room but could not tell whether in the trunk or on the table. Mr. Hotchkiss, Mr. Thornton, and perhaps others were with me when the search was made; the shaving-case was in the bottom of the trunk, and a number of shirts, stockings, and old letters were there; it was a medium size and not full of articles; his clothes which were searched were worn by him to jail, and took them off that morning; the suit was then taken next morning down to Dr. Allen's office to be examined; I was there and think I went with the person who took them down; was present when he took them off; I examined them for spots, but found none; think he didn't change his shirt that night; I examined it but found no spots on it; have acted as an officer somewhat; made out from his statement that he had spent \$5.75 to Boston, \$3.25 to Providence, and the same for return, \$5.75 back to Rutland, with an addition to Vergennes of some, I don't recollect what; I called it \$3.25 each way from Boston to Providence in reckoning up how much he had spent; have been to jail at various times; have not got others to go there to talk with him nor tried to get others; don't know as I have tried to get his friends to go there; don't know as I ever tried to get Mr. Barnard to go there; am interested in the reward somewhat; did not hear Mr. Thornton's cross-examination; was not in the adjoining room at the time, but came in as he came out.

*Re-direct.* — Stockings and box of collars found in the valise are the same as here produced; got no papers from Phair; from Mr. Pierce got a pawn-ticket or receipt (receipt produced); did not get any other receipts; these letters were found in his trunk.

*Cross-examination.* — Watch and chain, opera-glass, shawls, and rings were found by me; never found ear-drops and pin; searched for them as well as I could conveniently.

## LUCIUS COLLINS.

Reside in Castleton; hotel keeper of Lake Bomoseen House in Castleton; have seen Mrs. Freeze at my house; she was there on the 4th of June last with a man who registered his name as J. P. Phair; they were there with a team; went away right after supper; did not pay his bill; said he did not expect to come so far, or something of that sort, or would pay the next time he came; I said all right and went back to my work (hotel register produced); I was there when he came, but don't think I saw him when he came; but think I saw him register from the fact of my mark of "T" and "1 horse" against his name; saw him in parlor just before tea; should say the prisoner was the man who registered himself as Phair; had seen him previously, at least that was my impression when called to the desk as he was leaving; if I had not thought so, I wouldn't have let him off so easily.

## TESTIMONY OF J. G. PIERCE.

Reside in Boston, No. 1 Stoddart street; do business of clothing cleaning and repairing and pawnbroker's shop at 25 Howard street. (Receipt of Pierce for pawn produced.) Was present when that was made; name of E. F. Smith signed to it; shawl and opera-glass named on it; an agreement made between me and the person pawning the goods. (Read agreement.) Agreement copied into a book, ticket made according to law; age and residence given by party as, age 30, and residence St. Albans; goods taken care of by clerk. (Shawl and opera-glass produced.) Shawl same general description as this; couldn't swear to it; should say the same opera-glass by the coloring worn off around the edges and general appearance; not present when they went out of my store; clerk and boy were present when goods were pawned, also a man named Livingston, an acquaintance of mine; should say that the prisoner at the bar is the same person who pawned the goods; have seen him since that transaction; a conversation took place between Mr. Livingston and myself in regard to the man after he left the store; the man first came in and opened a valise; took out the shawl and asked me to lend him \$10 on the shawl; said a lady at the Adams House had not money enough to get home; I told him I would give \$5; then he took out a pair of opera glasses and said something about lending him \$10 on those; I told him I could sell him as good a pair for \$10; he said he would take them if they were as good as those; I said I hadn't them on sale; I told him I would give \$10 on the shawl and opera-glasses; the agreement was made and receipt filled out; he then went away; the valise produced corresponds in size and general appearance with that had by the man; a few minutes after, I went out on the corner of Howard and Court streets and met a man there, stopped and had a talk; while there this man who pawned the goods went past; he had his valise with him; he was dressed in a gray suit with a Kossuth hat; hat similar to the one now produced; he wore a mustache and goatee; looked him over when he came in as I generally do when I take

goods, as I sometimes get goods that are stolen; my attention was called to him by the story he told, which I did not credit very much, from hearing so many of the same kind.

*Cross-examination.* — My clerk filled out the receipt; he is now in the store on Tremont Row, Boston; was very near to him when he was filling it out; was looking at the man and heard what he said; I directed the clerk to fill it out; always have them copied and file them away; book is open to inspection to any one; hard to tell how many customers I have daily; sometimes fifty and sometimes a dozen; my attention was next called to the matter when the goods were taken away, the 17th or 18th of June; look over my pawn goods every week and notice those that are not redeemed; don't always think of the particular man who pawned goods when looking them over; a great many customers are known to them; usually can identify a man; don't know as I ever was mistaken; have been mistaken in twins; see a great many men with mustache and goatee; saw a photograph of the prisoner before coming to Rutland; shown one the day when goods were shown me; I gave a description of the man to them before the picture was shown; seen a great many people who wore the same colored clothes; could not have told the exact color of the hat afterwards; opera-glasses look like those left with me; think I could pick those out from a dozen others; seen some that shape and all shapes; in looking over pawn-tickets should remember men who I took goods of; was not informed of a reward being offered for prisoner; two weeks ago I first heard of it; no inducement offered for me to come up here except my expenses up here; don't know who spoke to me of the reward; I was here September 14th and 17th; could not tell from whom I heard of the reward; might have heard some party talking about it; was here and testified before Justice Evarts at the inquest; Mr. Phair was present there; think Stearns and Thornton were together at the store when the photograph was shown to me; don't remember of ever being mistaken as to identity; have been to station-houses a good many times to identify men and have never made a mistake; been in business a little more than five years; Phair was at my place from ten to twelve minutes.

#### MORRIS LIVINGSTON.

Reside in Boston; am dealer in clothes; am acquainted with J. G. Pierce; in June last was in Pierce's store and witnessed the transaction between Pierce and a man calling himself E. F. Smith (pointed out prisoner as the man calling himself E. F. Smith); saw him come in with valise; said he wanted \$10 on a shawl; Pierce said he would give him \$5; then he hauled out opera-glasses, and Pierce said he would give him \$10 on both; the ticket was made out and Smith left; went out soon after; I glanced at him half-a-dozen times in store; he said a lady wanted the money on the goods, was going away, and when she got to her residence she would send the money; saw the man Smith here on the 24th of June; did not examine the opera-glasses, but did look at the shawl; this one produced looks like the shawl; opera-glasses look

like those, but could not say they were the ones; did not hear him say where he was stopping.

*Cross-examination.* — Not interested in the transactions between Pierce and the man called Smith; nothing particular about it that called my attention; did not see a photograph of him before I saw him here in jail; did not see him marching down to Town Hall between two officers; did not testify at all here before Justice Everts; Phair was brought out to me at jail.

*Re-direct.* — Saw Phair with Vogt at jail; we went up there with Stearns and Thornton; first saw him at jail; we stayed outside until Phair and two or three with him came out of cell; he was setting down when I saw him.

*Cross-examination.* — Two old men were there in office of the jail when I saw him.

*Re-direct.* — There were others there besides him.

*Cross-examination.* — None others besides the old men.

#### ISAAC SMITH.

Reside in Boston; am acquainted with J. G. Pierce of Boston; in June last my attention was called to a man passing by Mr. Pierce on corner of the street (prisoner identified as the man passing); had a satchel with him; was within a few feet of him; took particular notice of him after he was pointed out to me.

*Cross-examination.* — I was standing on the corner of Howard and Court streets; he was going down Court street; had a right-angle view of him, very near full in the face; not square in the face; my attention was next called to the matter on the 23d of June by Stearns and Thornton; did not see a photograph at the time; saw one in Rutland after I had been up to the jail with Stearns; I heard Mr. Pierce tell of the crime that had been committed; saw Pierce after he got back; he asked if I recollected how the man looked that he pointed out to me; can tell generally a man when my attention is particularly called to him the next time I see him; the 25th of June I saw Phair in jail; may be mistaken in such a case when two people look exactly alike; nothing particular about the coat that I remember of, only a light colored coat; did not testify at the inquest; only before some one; don't know whether it was Justice Everts or not.

#### MYER ABRAHAMS.

Reside in Boston; am a broker; age 27; do business at 18 Salem street. (Watch, chain, and case produced.) Have seen this property; tell by the number of the watch; first saw it in Mr. Phair's, the prisoner's hands; received it of him; he came into the store and wanted to pawn a watch for \$40; I told him I could not give him as much, but would give him \$30; he said \$30 would do him no good; we had a talk a while, and I asked him where he was stopping and he told me at the Adams House; said he had a sister and two children there who needed \$40 to get home on; finally, I thought as he looked honest and seemed sorry to part with the watch, I gave him \$35 on it; afterwards the watch was delivered to officer Stearns, of Rutland, and he carried it away with him; saw

Stearns and Thornton the Saturday and Sunday I came to Rutland; saw Phair in jail on Sunday morning; they went into the jail, woke them up, and told them they had a new prisoner; I went in and recognized Phair as soon as I got in there; there were five or six there I think; it was about five o'clock in the afternoon when I received the watch.

*Cross-examination.*—I saw a photograph at Boston before I came here; the officers showed it to me, and told me of the fire and murder; can't say whether any prisoners but Phair had light clothes on when I identified him; can't say how many customers I have on an average daily; some days have a couple of dozen, and some days one or two; he was to pay five cents on a dollar per week for use of the money; it was on Saturday next after taking the watch, I think; could not say how many customers I had had in the meantime; may be mistaken in cases of identity; it is customary for pawnbrokers to give tickets to customers; may have been in there fifteen minutes before he went away; thought he was an honest-looking man, and so let him have \$35; could tell a man a week after he had pawned goods at my store; think I could tell them most anywhere; take no description of the person on book; take age and residence with the name; this man said he was from St. Albans; testified before Justice Evarts before.

#### SAMUEL EHRlich.

Reside in Boston, 502 Washington street; am a pawnbroker and jeweller; have been in business 13 years (rings produced); live on Northampton street now; lived last summer at 52 Windsor street; these rings I have seen before; I bought them last June, 9th or 10th, in the forenoon, about 11 o'clock; bought them of a man; the man is present (the prisoner identified); it was a purchase; gave \$5, I think, for them; merely weighed them, and paid him according to weight; had them a week or two, when officers came and got them, when I gave them up to the officers of this town that came down there; don't remember the name, but should know them if I saw them; the man gave no reason for selling them; the Masonic ring he took off his finger, and showed it to me; the others he took out of his pocket; I offered \$5 for the three, and he let me have them; he was not there more than ten minutes; next saw him here; was up last summer, about a month after this transaction; saw him at jail.

*Cross-examination.*—Was taken up to jail; I suppose it was a jail; a stone building; a few days after I bought them my attention was called to the matter again; was here in the month of July; some two or three weeks before that my attention was called to it by two officers from this town and one from Boston; did not remember the buying of them at first, and the second time a week after, by the same gentlemen and another officer, a detective of Boston; it is a common occurrence to buy rings almost every day; I belong to the Masonic order; my attention was attracted when they spoke of the Masonic ring; I put them right in with my rings, and have no private mark on them; when they were recognized by the officers I gave them up; they are the ones;

a good many of the kind, but easily remembered; if I were shown similar rings I suppose I could tell them; the Masonic ring was worn off, and noticeable for that; a watchmaker in the neighborhood of mine picked them out, named Vogt.

#### CHRISTIAN H. VOGT.

Reside in Boston; am watchmaker and jeweller; reside at No. 3 LaGrange street; in month of June last had offered to me three rings for sale (rings produced); they are the same rings; I did not buy them; offered by a man; that man is present (prisoner identified); I did not want them; he was in my store about ten minutes; he offered me first the Masonic ring; then the chased one and the stone ring; he asked me to give \$5; I told him I did not like to buy them, as that was not my business; Mr. Stearns and another gentleman, and a detective, called on me for the rings; I went with them to Mr. Ehrlich, to the man whom I had sent Phair; found the rings there, and picked them out from among his rings, about twelve days afterwards, I think; it was Wednesday when he offered me the rings, the 9th or 10th of June; it was the 23d of June the gentlemen called for them; saw Phair on the 24th of June at the jail, with Livingston and Smith; stayed only one day; was here St. John's day; when this man came to me, he didn't say where he was stopping, nor where he lived.

*Cross-examination.*— Had heard him described before coming to Rutland; was not told of the crime until I came here; they did not tell me about it the first time; I recollected the circumstance at once, and went to Ehrlich; he showed me the case, and I picked them out; the Masonic ring was worn, and size altered; an uncommon one; poor soldering; the other was a very small one; never saw any stone ring like it before.

*Re-direct.*— They asked me if I could recollect the man who offered me the rings; I said yes.

#### TESTIMONY OF JAMES DORAN.

Reside in Boston; age, 18; business, porter at Adams House; was a porter there last June (register produced); it is a register of the Adams House; am acquainted with the rooms at the Adams house; found a shawl in No. 61, folded up in a wardrobe; brought it to the clerk, John Donovan; he opened it, and then put it in the office (shawl produced); looks like the one folded up; did not examine it in particular; wardrobe stood on left hand side of room, standing up against a door leading into a larger room; 61 was not occupied by ladies; saw Mr. Stearns and Mr. Thornton when they came after the shawl, and saw them take it away; the clerk I saw give it to them; the same one found in No. 61; never saw the man called E. F. Smith at the Adams House.

*Cross-examination.*— Didn't unfold the shawl; only noticed a dark-colored shawl; the house is one where ladies and gentlemen both stop.

The Court then adjourned till 9 o'clock the next day.

## THIRD DAY'S PROCEEDINGS.

The court-room was quite free from visitors in the morning, but in the afternoon it was crowded by an interested audience, as was the gallery, the latter mostly by ladies. Thirty-seven witnesses were examined, and a full report of their testimony is herewith given.

## JOHN DONOVAN, JR.

Reside in Boston; was hotel clerk the past year of the Adams House, Boston, located at 371 Washington street; about half a mile from Providence depot or ten minutes' walk; about twice the distance from Fitchburg depot. (Adams House register produced.) Was clerk of the house in June last; a man registered himself as E. F. Smith, St. Albans, Vt., and occupied No. 61; saw him later in the evening; was there when he arrived and saw him register; that is the last name on the page; he wrote the name himself; have seen the prisoner at the bar since that time, and seen him twice since coming to town this time; he resembles the same man as registered under the name of E. F. Smith; was here last summer and testified; he arrived about five o'clock, P.M., on June 9th, before tea; he remained overnight and occupied 61; saw him again about ten in the evening, coming in; the porter, named James H. Doran, was porter at that time; he brought me a shawl the next day, black and red color; a half shawl; noticed some spots on its centre; kept it in the office until Messrs. Stearns and Thornton came after it, when I gave it to Mr. Stearns, and they all went away together (shawl produced); should say this was the shawl; the man wore a light suit, gray in color; wore a light hat with dark band; had mustache and chin-whiskers; medium size and rather stout; about 33 or 35; they came after the shawl about the 12th of June; my attention was first called to it at that time.

*Cross-examination.* — Saw the man's photograph; Mr. Stearns showed it to me; the fire and murder were talked over when they came for the shawl; was here on the 12th or 13th of June last; saw Phair taken into the Town Hall between two officers; had on light clothes then; have seen him twice since I came this time; I described the clothes to Stearns, before seeing the picture, as a light suit, light hat, and dark band; suit was very common; nothing remarkable about the man's appearance; swore before Justice Everts, that I would not swear it was the man; I did not go to room No. 61, and don't know whether he occupied it; only know it was assigned to him; saw him passing that way later in the evening; the house does a very fair business; would not undertake to pick out all the guests who stopped there.

*Re-direct.* — Was shown the photograph of the man by Stearns; I was asked if I remembered the party who occupied the room, and I said I did; I described him to them; I should say the prisoner was the man but could not swear to it.

## MARTIN G. EVERTS.

(Paper produced containing writing of Phair, his own name and that of E. F. Smith). On Sunday morning after fire was called to jail, and in company with Messrs. Stearns and Thornton, and Judge Dunton as counsel for prisoner; he was requested to write his name on a piece of paper; he did so, and then, at request, he wrote E. F. Smith, St. Albans, Vt.; this all was written in my presence and in the presence of the others named; I acted as prosecuting officer before magistrate before whom prisoner was held; also acted as coroner, and took a good deal of evidence for preservation; was at the fire about eight o'clock; had a consultation with others, and finally put a guard over the scene of the fire; when examination commenced there was no track or trace made on ruins; we made an examination of ruins next day by raking them over carefully (instrument produced); think it was Sunday, while riding by, my attention was called to another instrument that had been found; Henry Balbridge found it and gave it to me; I kept it until the Grand Jury sat, and then gave it to them; I never saw such an instrument before, and have come to no satisfactory conclusion about it; it looks like steel, and to have never had a handle; it bears the name of the maker, "Artin," and "Albany" under it, are all that can be made out of the lettering; this is the same instrument that was found; a part of a Saratoga trunk, a pair of scissors, remains of a lady's pen-knife, a hatchet and other things were found in ruins; men were at work under main part of house at that time; Mr. Franklin Billings has the hatchet, I think, and the other things; saw a razor blade that was picked up, but don't know who found it; nothing could be found of any value, like watches or jewelry, but some forks were found that seemed to be bound up in same way as when purchased.

*Cross-examination.* — I did not do much of working over the ruins as there were many there who had the implements; did not see the man who found the razor blade to remember who it was, but was there when it was found. Isaac Smith and Morris Livingston testified before me at the inquest.

## FRANKLIN BILLINGS.

I was one of the selectmen of the town at the time of the fire; got to the fire just as they took the body out; got Dr. Allen and Dr. Mead there, and stayed during their examination; then got a man to watch the premises; thought it necessary to have the ruins thoroughly examined; next day, about noon, got some men and had the ruins examined; in examining the ruins we found her shears, her scissors and five old forks; also a hatchet and razor (produced hatchet and razor); when I got there the frame of the bed was on sleepers, but the body had been taken out; hatchet found very near where the bed came down; found several keys to her trunks; a very thorough examination was made and nothing of value was found; think Warren H. Smith found the hatchet, and that Mr. Perkins found the razor; lived about half mile by the road from the building, but a quarter of a mile across the lots;

woodshed was built after the house was built; no cellar under the house.

*Cross-examination.*—I employed Mr. McCarthy to watch the ruins and Mr. Simeon Jones to stay while he went to his meals; don't know as I can tell that the hatchet was found under where the bed came down; I engaged Mr. McCarthy, Mr. Steele, and others to help; was there when Mr. Perkins found the hatchet and know we were raking under that spot at the time; did not know there was a skeleton in the house when it burned; we found parts of her skull in the ruins; think from the house to the Berwick House by railroad track some more than half a mile; it might be by way of street a mile; usual course is by Forest street; should say not quite a mile; did not take any measurement of the house; think about 22 by 30; it stood on cedar posts, a balloon frame but well-finished; was inside of the house once before it was burned but not a frequent visitor.

*Re-direct.*—No bones found there that did not come from arms or lower limbs; were found where the bed would come down.

*Cross-examination.*—The bones were burned almost to a coal; could tell what they were.

#### MRS. NANCY KEENAN.

Reside on Forest street, first house north of where Mrs. Freeze's house was burned; my husband is John Keenan; lived there last June; was acquainted with Mrs. Freeze; she had been my neighbor about a year; she was quite frequently in my house; have occasionally been in her house; she used my stove a good deal in warm weather to make tea; was in her house Monday morning or day before the fire; saw and spoke with her; it was about 10 o'clock in the forenoon; that was the last time I saw her, or about 11 o'clock buying meat at a cart in front of her house; was at her house frequently on Monday after water in her cistern; saw no one about the premises that day, but heard some one talking in the house; did not take particular notice of the voices; nothing unusual in fact of hearing them there; saw no one go there on Monday; saw two gentlemen go to the door on Sunday, but don't think they went in; don't know whether any one else was there when they called; had heard some one talking about the house that day; saw Mrs. Freeze the Thursday before starting from her house with a gentleman in a carriage; did not notice him particularly and don't think I should know him again; don't know where she went that day; did not hear anything unusual on Monday about the premises; sleep on the south side of the house next to her house; the first I heard of the fire was Mr. McCarthy rapping on the door; he said he had rung the bell but had heard no sound; helped take out things downstairs, and there were a number there by that time; I was there among the first; lower part of the house was perfectly orderly and quiet; went into the hall and saw Mrs. Freeze's hat and shawl, on the hat-rack, that she was accustomed to wear; there was a shed on the back part of the house; the door was open when I went in; had been in her room where she slept last winter when she was sick; her room was in the

south-east corner, upstairs; the bed stood in an alcove; her room was to the left of the stairs and the alcove on the right of the room; when I was in the room the bed stood head to the south; should judge there was no spare room in the alcove; Mrs. Freeze was sitting up in an easy-chair at the time; don't recollect the appearance of the man who was there on Thursday; know that Mrs. Freeze had lately purchased a shawl; knew that she had got some opera-glasses recently.

*Cross-examination.* — I know there was some one trying to get into Mrs. Freeze's house on Wednesday before the fire; did not see her make the trades of the shawl and opera-glasses; never saw a great many gentlemen go there; could not see her house from the north side of my house, where I usually stayed.

#### WARREN H. SMITH.

On Wednesday after the fire I went down to see the ruins, and was there before any examination was made; helped to get some of the tools to examine; stationed myself where the remains of the bed were; raked over ashes which others threw out; was looking for watch or valuables; was there about an hour; Mr. Perkins worked near me; stayed till that was worked over; while there a good many pieces of bone were found; some were skull-bones and some pieces of other bone, one a thigh-bone; these were passed to Mr. Billings; while examining we found a razor-blade; I took it and passed it to Mr. Billings; this one produced has the appearance of the one; it was found under where remains of bed were found; forks were found while I was there; nothing to indicate that any valuables were burned was found while I was there; examination very careful for that purpose; am an attorney; am accustomed to examine handwriting. [Attention called to signatures on paper; evidence as an expert objected to, but evidence received.] Have no doubt that all the signatures were written by the same hand; some points unmistakable; the peculiarity of the letters are positive proof. Numerous features and traits of handwriting were closely pointed out by witness.

*Cross-examination.* — The hand is a little set; signature of man not accustomed to writing; young men very apt to take up imitations; it would be special effort to make those peculiarities by any of us; saw ruins of bed taken out of ruins; consisted of wire-springs; saw some pieces of skull there.

#### GEORGE R. BOTTUM.

Reside in Rutland; cashier of Baxter Bank; have been cashier for ten years; have had some occasion to compare signatures in my own business and twice in court (signatures produced and examined by witness); I should say all were written by the same person; same formation of letters and is the same signature; the signature on receipt is written with a finer pen; same style of letter and same general appearances; the word "Smith" is almost precisely alike; the "St. Albans" looks alike in every instance and should say they were written by the same person; all letters and all writing in the words "Smith" and "St. Albans" are the

same style and seem to be written by the same hand; as result of my examination should say all writing produced was written by the same hand.

*Cross-examination.*—I saw these signatures last evening and examined them partially; have had doubts myself about signatures but don't know as I have been seriously mistaken; not usual for cashiers to be mistaken in signatures; sometimes does happen; have seen men write the same hand; teacher and scholar frequently write similar; this is a prominent hand; the "S's" are peculiar to the person who wrote them; the turn of the "S's" where he takes off his pen is peculiar to the writer; should not say those signatures were intended as copies of each other; should say it was all an independent hand-writing.

#### HENRY F. FIELD.

Reside in Rutland; am cashier of the Rutland County National Bank; been so since July, 1867; previously connected with Rutland Bank and Brandon Bank, in the capacity of teller; we deal very largely with signatures in our business, and are obliged to see a large number of them; had frequent occasion to examine them in connection with our business. [Signatures produced and examined by witness.] Think they were all written by the same hand; I examined them previously at your request night before last.

*Cross-examination.*—Not in habit of making mistakes in hand-writing; very likely mistakes in identity of hand-writing occur at times.

#### SIDNEY W. ROWELL.

Reside in Rutland; am cashier of National Bank of Rutland; have been teller and cashier since 1861; am examining signatures daily, and have been since I have been in the business. [Signatures produced and examined by witness.] All the writing seems to have the same general characteristics; if Mr. E. F. Smith had an account at our bank, and those two signatures were on separate checks, we would pay the checks; should say the signature of John P. Phair was the same hand-writing as the others; notice the same "S's" in "Smith" and "St. Albans;" they were made by the same hand.

*Cross-examination.*—Don't know but the "S" is a common kind; it has a character about it; rather fixed in its style; bank cashiers sometimes make mistakes but don't know as we ever paid a forged check.

#### HENRY H. SMITH.

Clerk of this court; over six years; prior to that time was deputy clerk for twelve years; my business has lead me to read many different hand-writings and have been called on to determine the genuineness of signatures before this Court and others. [Signatures produced and examined by witness.] My opinion is that all were written by the same hand.

*Cross-examination.*—My opinion might be possibly a mistaken one; not paying out money on signatures although money is paid

out on signatures on my order ; my business is dealing with hand-writing all the time.

#### J. W. VON NIEDA.

Reside at Rutland ; am a printer at the *Globe* office ; so employed in June last ; recollect day of John P. Phair's arrest, as I was on the train when it took place ; had come from Providence ; first saw Phair at Fitchburg, on the train ; did not know his name, but had seen him at Berwick House ; was a boarder there ; when at Worcester got hold of *Boston Journal* (paper produced) ; that is the paper I purchased ; from that I read ; had conversation with Phair ; showed him the paper, and pointed to him the item and read it to him ; then handed him the paper afterwards (witness was asked to read the item ; objected to ; evidence accepted ; item read by witness) ; Phair asked me whether the murderers had been found out ; we talked of the matter some fifteen minutes ; he made the remark that the man ought to be hung for committing a deed like that ; he played cards with three other gentlemen to Keene, N.H. ; there he got out and we had a little talk ; then separated until got to Bellows Falls, when we waited on platform for the train ; then got on to train together ; at Cuttingsville I occupied two or three seats ahead of him ; saw Crawford come on to train and arrest Phair ; he had occasion to offer me 50 cents at Keene ; think he took it out of a wallet ; we spoke of the murder at Bellows Falls ; I saw some other money beside what he gave me ; he did not take that out ; had no means of knowing how much there was in his wallet ; don't think he took the 50 cents out of the other money ; there was a small roll of money in his wallet.

*Cross-examination.* — Was not dark when I first saw him, but was dark at Keene ; don't think I would swear that he had a wallet, but it is my impression he did ; I came by way of Worcester from Providence ; cannot swear as to amount of money he had.

*Re-direct.* — Gave my testimony last summer before Justice Everts.

Court then adjourned for dinner.

#### C. H. MATTHEWS.

Crawford and myself arrested Phair at Cuttingsville on the midnight train coming north on night of 10th ; brought him to Rutland and took him to jail from there ; when he was arrested we asked him where he had been ; said he had been to Providence ; went Tuesday morning ; we informed him for what he was arrested ; he was much surprised to be arrested for that crime, as he was a friend of Mrs. Freeze ; went to circus with her a few nights before ; a surprise to him that he should be accused of her murder ; said he had not heard of the murder when he was arrested ; he was standing on the platform of car when we arrested him ; we searched him right away in the car ; he had a small hand valise ; the one produced is the one ; and an umbrella ; we did not examine his valise till we got to the Berwick House ; there found two boxes of collars, two or three pairs of socks, cravat, suspenders, and shirt, and two bottles of brandy ; the shirt was new and never worn ; white, fine shirt ;

said he bought that shirt at Mr. Haven's, in Vergennes, before he came here; I took the shirt the next Saturday to Vergennes, and to Mr. Haven's store, and submitted it to the examination of the clerks; informed them as to what was claimed in regard to the shirt; they examined it; three of them; am acquainted at Vergennes and know Mr. Haven's son; did not know the two clerks; Mr. Crawford, Mr. Stearns, Mr. Faulkner, clerk of the Berwick, were present when the valise was examined; found his clothes in it, letters, razor-case, lather-box also.

*Cross-examination.* — Shirt was a new one and had never been worn; knew it by way it was done up; have seen them done up at laundry; as a general thing the trade-mark is not left on it; shirt was left at Berwick House, and cannot be found now; mark gave maker's name; don't know what the name was; marked with red letters; knew it was not indelible ink; don't know whether it would wash out; aside from that it presented the appearance of those done up in a laundry.

#### GEO. W. CRAWFORD.

Arrested Mr. Phair, the prisoner, at Cuttingsville, on train coming from Boston; went down on train; Mr. C. H. Matthews went with me; when we got to Cuttingsville I saw Mr. Phair through the window; Matthews was ahead; Phair's back was towards me; one hand on platform; took him into the car and sat him down, and put a pair of handcuffs on him; Matthews came back, and I told him I got the man; Phair asked what he arrested him for; I asked him if he did not know of the murder, and he said he had not heard of it; he had a satchel or black bag; similar to the one produced; brought him to Rutland; searched him at the Berwick House, and his boots; found on him \$5.65 in money and a ticket to Vergennes; money was in right hand vest pocket; no wallet found; found a new shirt, two bottles of brandy, necktie, and a pair of socks in valise; was white, starched, new; he hadn't worn it; he said he purchased it in Vergennes, of Haven; said he bought two and wore one; don't know what became of shirt; left valise with Matthews, and told him to take care of it.

*Cross-examination.* — Phair did not see me as I came up; I got off my train and walked along to the other car; he did not pass by me; I was ahead of the train he was on; he was on platform between baggage car and passenger car; gave him no chance to run; saw no attempts to run; am sure Phair was on the platform; did not notice how many cars on the train; I got on right hand side of car; he appeared to be looking off; he asked me what he was arrested for; I told him Mrs. Freeze had been murdered, and he was arrested for murder; he said that was the first he had heard of the murder; am claiming the reward; may be others claiming the reward; don't know how many have employed lawyers to look up their interests; have seen Phair very often when he was up at the inquest; had him here with blue clothes on when he came to plead; always thought the light suit most suitable; I told him I had been ordered to have him wear them.

## RICHARD H. PREBLE.

Reside at Vergennes; am clerk for F. K. Haven; employed there for three years; Mr. Matthews brought to the store last summer a shirt; I examined it and found Mr. Haven never had such a shirt for sale.

*Cross-examination.* — Remember of Phair's buying some shirts at my store four or five months before; bought two of me, and they were afterwards exchanged with another clerk; the other clerk is Charles Haven.

## ARTHUR C. LAMB.

Reside in Vergennes; am clerk in F. K. Haven's store; been there two years; last summer Mr. Matthews brought a shirt there for examination; I examined the shirt; Mr. Haven has not had any such shirt there on sale since I have been there.

*Cross-examination.* — Other clerks may have changed shirts with somebody.

## B. M. BAILEY.

Reside in Rutland; keep a jewelry store; knew Mrs. Freeze in her lifetime; repaired a watch for her at our store, and have a record of it; this is the book containing records; always take a record of the number of watch, name of maker, and the kind of watch; entry made by Mr. Parmenter, now deceased; two entries made by him; he was the watch repairer; I did not do that business. (Entries objected to as evidence by the counsel for respondent, but accepted by the Court.) Part of Mr. P.'s business to make entries; first entry: "Dec. 11, 1871, Mrs. Freeze, watch, gold anchor, Fries maker; cleaning screw and repairing jewel. No. 56,376;" second entry: "Jan. 17, 1873, 56,376, Mrs. Freeze, gold anchor, Fries maker, cleaning and jewel, \$2.00." (Watch produced.) This is evidently the watch, corresponds in number, make, and general character.

*Cross-examination.* — Couldn't swear to the identity of the watch independent of the record.

*Re-direct.* — Have taken that watch in my store from Mrs. Freeze; recollect its general appearance; looks like her chain as I saw it on the watch.

*Cross-examination.* — It looks like the watch and chain; that's all I care to swear to independent of record.

## BEN. K. CHASE.

Reside in Rutland; am a watchmaker and jeweller, and a dealer in jewelry. [Rings produced.] One ring has my cost mark on it; the figures were made by myself; it is an engraved band ring.

*Cross-examination.* — The mark on the ring is "V. Z. K." marked on the inside.

## RILEY DEMING.

Reside in Brandon; proprietor of the Brandon House; have the hotel register here; was keeper of the house on the 8th of June last; was at home myself; Barnum's circus was there that day;

don't know the prisoner ; my patrons register generally, but on that day not one in twenty registered.

#### CHARLES L. STIMPSON.

Reside in Rutland ; am of the firm of Mansfield & Stimson ; the prisoner worked for me fourteen days in all ; continued up to the 5th of June ; Thursday, the 4th of June, he did not work ; no work was done after the 5th ; remember the burning of Mrs. Freeze's house ; up to that time he had not been discharged as I knew of.

*Cross-examination.* — Pay day had not come around at that time.

*Re-direct.* — He had given no notice of his quitting up to that time.

#### M. K. HOTCHKISS.

Reside in Rutland ; in May and June last was proprietor of the Berwick House ; Phair boarded with me from the 20th or 21st of April up to his arrest ; he had a room there ; No. 67, I believe ; he roomed alone ; last saw him on Sunday at noon, before the fire ; was called upon to examine his bed in his room the same day of his arrest ; boarders' beds were ordered to be changed on Saturday morning ; his bed had the appearance of not being occupied since it was changed.

*Cross-examination.* — I don't know when the bed was changed ; don't know as I have ever examined a bed to know how much difference it would make in a bed to have it slept in.

*Re-direct.* — Think it would make some difference in a bed to have it slept in three or four hours.

*Cross-examination.* — If sheets are folded and ironed, and have been slept in, the wrinkles would be more or less out.

#### OLIVER J. CAIN.

Resided in Rutland in June last ; in the month of June last I was night-clerk and bartender ; was acquainted with Phair ; was at the circus in Brandon ; went at 2.10 in the afternoon, and came back on midnight train ; had been acquainted with him since the second or third night of his coming to the hotel ; didn't see Phair at Brandon that day ; went through the train coming home, the baggage car and two coaches ; quite a number of passengers, but the cars not crowded ; last saw Phair Sunday afternoon before the fire ; don't know whether it was before supper or just after ; was present in his room after his arrest, and saw his bed ; should think the bed had not been slept in since it was changed.

*Cross-examination.* — Clothes on bed were turned back over foot-board ; don't know who turned them, or how long they had been turned back ; could not see whether they were both clean, but did not look dirty, and both looked alike ; good many people there at Brandon that day ; saw Burgess, Mike Leonard, and don't remember having conversation with any one on the train ; did not examine them as I went along ; not claiming any of the reward ; I have heard that two of the officers say I was the first one who notified them of Phair ; hope to get some of the reward, and should not refuse it if given me.

*Re-direct.* — The train that night was on time ; went to Berwick House and retired about 3.30 that morning, in the meantime was in the office of the hotel and in the bar once or twice ; saw nothing of Phair.

*Cross-examination.* — The bar is at the further end of the hall ; should not see the boarders from there when they went up stairs.

#### MARY COKELY.

Reside at Berwick House, and was chambermaid there last June ; knew Phair ; he roomed there ; his room was 67 ; I had care of his room ; changed clothes on his bed Friday before his arrest ; attention called to the bed on Tuesday after ; examined it, and did not look to me as if it had been slept in, but some mused on the outside ; pillows didn't look as if they had been slept on ; last made up bed Friday, I think ; but might have done so since, as had some help about that time, and can't say positively.

*Cross-examination.* — I don't remember when I saw Phair last ; did not see Phair playing accordion Sunday evening, but heard him playing ; no one else had an accordion there to my knowledge ; good many people there during circus time ; good deal of work then ; always put one sheet every week.

#### MARY DELPHY.

Reside in Rutland ; knew Mrs. Freeze during her lifetime, and slightly acquainted with her ; last saw her a week before her death ; knew she had purchased a new shawl ; was in my house and had it on just a week before her death ; looked at the shawl (shawl produced) ; should think it was the same one ; did not know of her having any opera-glasses (half shawl produced) ; seen one that looked like that same style.

*Cross-examination.* — My house is No. 3 Willow street ; she was at my house a week before she died ; then had a new shawl ; would not swear this was the same shawl, only looks like it.

#### CLARK F. RICHARDSON.

Reside in Rutland ; proprietor of Berwick House ; last June kept a livery ; was some acquainted with Phair then ; also some acquainted with Mrs. Freeze ; last saw her before her death, about a week before ; she was at my stable, and she must have had over \$200 in her wallet ; could see two 50's, a \$100 bill, and some twentys, also some other bills that were in another portion of the wallet ; Phair had a team of me the Thursday before to go to Castleton, and came back in the evening ; didn't pay for the team ; spoke to me up at the jail about it and would see it paid, that he went farther than he intended — to Fairhaven ; next day after he returned he said he should have some money on the 15th and would pay me then.

*Cross-examination.* — Don't recollect of his saying that he could pay me then if I said so ; frequent thing for men to get trusted for teams.

### GEORGE WILLIS.

Reside in Rutland ; tax-collector here ; knew Mrs. Freeze in her lifetime ; called on her some time in May, and saw her at her house ; saw her take a portmonnie and looked for some small bills ; saw some \$300 or \$400 in money ; she then took out another wallet containing more money.

*Cross-examination.* — Think this was about the middle of May ; did not count the money.

### EDGAR NELSON.

Reside in Rutland ; business in June last was butchering ; run a cart and supplied Mrs. Freeze ; last time delivered some morning before fire ; was there myself between nine and ten o'clock ; paid for meat she had ; did not see any money in particular.

### HENRY BALDRIDGE.

Reside in Rutland ; was at ruins of Mrs. Freeze's house on Sunday after it was burned ; found an instrument there near the centre of the building ; instrument produced I think is the one ; handed it to Mr. Everts.

### CORNELIUS H. FORBES.

Business as bookkeeper for Thomas Ross, of Rutland, and was in that business last May and June ; Phair worked for Mr. Ross from the 22d of April to May 19th ; paid him, April 24th, \$2 ; May 16th, \$16.65 ; May 18th, \$27.50, by check on the Rutland Bank.

*Cross-examined.* — Paid him in the whole \$46.25.

### E. J. ORMSBEE.

*Examined by Justice M. G. EVARTS.* — In respect to witness James Nolan, clerk of J. G. Pierce, the clerk could not appear with Mr. Pierce, and we were obliged to do without him, and have Mr. Pierce testify.

This closed the testimony on the part of the State. The

## TESTIMONY FOR THE DEFENCE

was then commenced. The first witness called was

### DORA A. WILSON.

Mrs. Freeze had a box there belonging to a physician ; never looked into it myself ; never saw the trunk ; she had two or three in the lumber room ; common size, black ; never saw the physician there.

### MRS. EMELINE HARDY.

Know nothing of the physician being at Mrs. Freeze's, only what she has told me ; never was at the house ; saw a coach go up by my house Tuesday night at 11.45 ; the hour by fact of waiting for company on sleeping train, and heard it go past ; it went to-

wards Mrs. Freeze's; her house was about half a mile from my house; in about half an hour heard it go back towards village.

*Cross-examination.* — Don't know what coach or hack it was; saw it, and it was a two-horse coach; when it went back did not see it, but supposed it was the same one; nothing unusual for hack to go by at any time, night or day; don't know where the coach went.

#### JOHANNA GLEASON.

Was at work at the Berwick House last June; knew Phair by sight; saw him Sunday night in his room playing, and I asked him to come out and play for us girls; he came out and played for us until half-past nine, and then went to his room; he played on an accordion.

#### JOHN WILLIAMS.

Am a barber; last May and June my shop was under the Berwick House, until the 5th of June; knew Phair; shaved him from the time he came until the 5th of June.

#### HENRY WILLIAMS.

Am a barber; had a shop at Rutland over a year past, under the Bardwell House; recollect shaving Phair the week before the fire, and the Saturday before, and then dressed his hair on Sunday, at about 11.30; have been at Mrs. Freeze's house; saw a razor there; was there to sell her some hair goods; she sent after me; my attention was called to the razor by her saying something about it; saw a razor in a bureau drawer, where she pulled out some hair that she wanted colored; saw a trunk there, on the right side of the stove; the name of a gentleman was on the trunk; did not notice any indication of the man's business on the trunk; it was a leather trunk, covered, and three straps on it; noticed it particularly, as the name on there was as large as my hand; either Johnson or Wilson; saw a razor there again, when I went there two weeks before the murder down stairs; did some work for her, and took it there to see if it would suit her.

#### M. A. HITCHCOCK.

Reside in Rutland; been here about seven years; sell milk; been in business about four years; was somewhat acquainted with Mrs. Freeze; was at her house selling milk the morning before it was burned; was on her steps; supplied her with milk; did not go into the house; a dish was on the threshold of the door; left milk in that; heard some conversation inside; it seemed to be upstairs, between two gentlemen and a lady; recognized her voice, but did not the gentlemen's voices; was waiting for my boy to come up; took it that they were angry by the conversation between them. [Conversation objected to by counsel for the State]; heard the conversation distinctly; the parties were wrangling; the blinds were closed, but don't know whether the window was open or not.

*Cross-examination.* — This was Monday, about 9 o'clock, A.M.

## MRS. LAURA I. STEWART.

My husband and I went to Boston the Tuesday Mrs. Freeze's house was burned; saw Phair in a hack in Boston, and rode in a hack with him from Fitchburg depot to Providence depot; no one else was in the hack that stopped there.

*Cross-examination.* — Never saw him before that time nor since; think prisoner is the same man.

## GEORGE W. STEWART.

Went to Boston on Tuesday, the same day of the fire, with my wife; saw Phair; he got in the hack at Fitchburg depot, and got out at the Providence depot.

*Cross-examination.* — Had not seen him since then until when this trial commenced; knew him by the clothes more than anything else.

*Re-direct.* — Was in the hack fifteen or twenty minutes; had a conversation once in calling attention to the old reservoir; did not ascertain where he was from.

*Cross-examination.* — Adams House is half or three-quarters of a mile to Providence depot; farther from there to Fitchburg depot.

*Re-direct.* — Presume I have made the remark of going with him in the hack; think that my attention was first called to matter by some one else saying that Phair said he rode with me; that is the way I found it out.

## PETER LAVIGNE.

Am driver of hack; been in business here for twelve or thirteen years; was acquainted with Mrs. Freeze; was in the habit of driving men down to Mrs. Freeze's, both night and day.

## GEORGE W. STEWART.

*Recalled.* — Am a conductor on the Rutland division of the Central Vermont Railroad; have been for the last seven years.

## GEORGE SARGENT.

Reside in Rutland; work in stable for Mr. Richardson; am in barn most of the time; have driven some; have driven men down to Mrs. Freeze's several times in the evening from 8 to 9 o'clock.

The court then adjourned till 9 o'clock the next day.

## FOURTH DAY'S PROCEEDINGS.

## WALTER C. LANDON.

Reside in Rutland; drove by Mrs. Freeze's house Tuesday morning at 6.20; noticed the house; saw no indication of fire; heard alarm of fire after getting home; live about half a mile from there.

## ARGUMENT OF E. J. ORMSBEE.

The State's Attorney opened by referring to the fact of his stating what he expected to prove before putting in his testimony. In looking back upon that statement of the case which justified the arraignment of the prisoner, he asked if the counsel for the State had not more than fulfilled the prediction and promise; it was understood that this was a serious matter, not only for the prisoner but also for those who present this man for trial; they had endeavored to be actuated by no undue zeal, but had seen to it that they kept within the line of their duty; the charge was the most serious in the catalogue of crime. The case would be presented on the facts alone, unvarnished and not enlarged, and it was upon those facts he asked the jury to pass upon the guilt or the innocence of the prisoner at the bar. When he had presented the case and grouped together the evidence, the case as presented would be left with the jury for their decision. Their duty was as plain as was that of the counsel. No partisan zeal was required in a criminal case like this, but merely a presentment of facts in a fair and ungarbled manner. It devolved upon the State to convince the jury beyond a reasonable doubt. First, it was evident that a crime had been committed, and it was necessary for him to define the crime of murder. Still it would be if there were different degrees of murder to be raised in the case, but now it was only necessary to show that the life of a human being had been taken by malice aforethought. The indictment for murder had named the various ways by which the crime was committed, and it was only necessary to show that it was committed by one of these various ways. It was necessary for the State to show that the life of Mrs. Anna Freeze was taken, as the charge against the respondent was not for the murder of anybody else; they must show that the body found at No. 92 Forest street was that of Mrs. Anna Freeze, and to show that Mrs. Anna Freeze came to her death by the hand of violence. Also, that John P. Phair is the man, and that by his hand her life was taken; all these beyond a reasonable doubt the jury must be satisfied as reasonable and considerate men. It must be understood that the counsel of the State stood stripped of any sympathy. The jury would be appealed to, as is always the case, in language of sympathy, and the respondent held up to you in such terms. That was well in order to guard against injury, and beyond that the jury should not go. It was known that he has a mother whose life would be crushed should her son be found guilty, and no one had more consideration than himself for the mother and sisters; but this had nothing to do with their deliberations. They were only to try upon their oath the issues between the State and the prisoner, and not between the State and his father, mother, sisters, and brothers; simply to try upon the evidence presented by the State. Evidence had been put into this case which claims that the prisoner was not the murderer; that the victim was not as reputable as she should be, but had departed from the paths of chastity and rectitude. The Court would tell them, their own good sense would tell them, that that fact would not

relieve them of the responsibility in the matter. Their life is protected by the same law from the hand of the assassin as were the best and purest in the land. That was one of the beauties of our government; the high or the low, the chaste and the degraded, all stand before the law on a level. Nothing could be asked in behalf of the prisoner because of the want of character pertaining to the victim who was claimed to have been murdered at his hands.

In considering the testimony produced by the government, that of the defense which had been produced took not a feather's weight from that produced by the State.

Has a murder been committed? About twenty minutes past six a fire was discovered from the house of Mrs. Anna Freeze. You will remember the condition of things in the house as testified to, and so far as the testimony is concerned there was no contradiction of facts. We need not group the testimony, for it stands as so many facts proven and speaks to you as facts and stand uncontradicted. This shows that the house was found on fire, a smothering, slow fire, when entered by Mrs. Keenan and others. How was it set? By the respondent before his departure at 4.30. The other side may ask how this can be possible. You will be asked how it could be, in words both loud and long. But you remember the condition of things there. There was no fire in the house except in that alcove, but there it had been burning a sufficient time to burn the flesh off, and the bones of the body of this unfortunate woman, so that they dropped before the bed fell. God only knew how long it had been burning. You could see only a little fire, but how kindled, how confined, how regulated, the Almighty and the prisoner only know. But we do know it had been burning long enough to burn the flesh upon the bones of that woman, roasting until the bones fell from the bed. There was time enough for that. They need not say it was not possible. If asked where the fire was kindled, how managed and kept, it is only necessary to say that it was burning until such work had been done that is known was done. How and for what reason it was done, only God and the prisoner know. If there is anything mysterious about the case, it is in the manner of its accomplishment. Devils always leave their tracks behind them, and always leave trace of their footsteps somewhere. It is evident that whoever committed the deed, that person piled upon that woman a quantity of bedding, and for what? That she might be burned up. But the very clothing protected her, and gave you and me the evidence that a murder had been committed. Had not these precautions been taken, it may be safely said that the murder would have been protected from the public eye.

This evidence is unmistakable, and would not be had it not been for this effort made by the murderer. You will be satisfied that the body was that of Anna Freeze. Is there any doubt about it? It cannot be. Fortunately, we have beyond all question that evidence which will satisfy you and the world. The body was found in the room and in the bed of Mrs. Anna Freeze, where she always lodged. Is there anybody missing from the rank and file of humanity? Yes. Who is it? Who has gone from our midst? It is Anna

Freeze. Gone since the 9th of June. When those surgeons and physicians examined that body they found in the mouth of the woman that which is sufficient to justify the hanging of the best man in Vermont — the left inciser of the upper jaw. We find from Dr. Lawton that it was a tooth which he set for Mrs. Freeze, and Dr. Allen says he took the tooth from her mouth. In this there is no possible doubt, and there is also no possible doubt of the identification of the body. By the assistance of the physicians we are able to come before you with proof absolutely certain that she came to her death by loss of blood, and not by burning or suffocation. It is shown that an examination was made immediately after the burning, and wounds were found which of themselves would cause death; the location was discovered, and the wounds made in that place were usually for the purpose of taking life, — a wound from ear to ear. Doctors say no doubt that the wounds were made before burning, and that gash itself shows that it was cut before burning, and no evidence would have been there had they have been punctured from falling from above. Further, they say an examination was made of the organs of the heart, lungs, and wind pipe, enabling them to say beyond a possibility that the body was dead before burning, and showing an entire drainage of blood, and the body became lifeless for want of blood, and the lungs were collapsed. Had death ensued from fire, the fire upon the surface dries up all escape of blood; the same theory that no bleeding occurs from a burn. The windpipe showed there had been no inhaling of smoke, but the reverse. If we were not right or the doctors wrong, they would have flooded this Court with proof on that subject. They have attempted to prove nothing; therefore we are justified by all reason that our statements stand proved. If they were not true according to the testimony, they were susceptible of contradiction, and within reach of the attorneys, and they have not attempted it. It has been proved that death resulted from wounds, and from such wounds, as the indictment reads, the said Anna Freeze instantly died.

The next step is the all-important one to the prosecution, and to respondent, and that is, having shown a murder has been committed on the 9th day of June last, in Rutland, and that Anna Freeze was murdered, and died from wounds, and not from burning, we now must satisfy you beyond a reasonable doubt that John P. Phair took her life. If ever a set of circumstances pointed to and surrounded a man in any case, this is the case. There is no man among us that has got the nerve of this man. He laughs when others laugh, jokes when others joke, and this when arraigned at the bar for the crime of murder. If he did the deed he did it alone, unassisted and unseen save by the eye of the Almighty. Never was there a case more clearly shown, nor could it be any living mortal man than the one charged. Usual to try to show somebody else was seen in the vicinity, and to have been the person who done it. But no such attempt has been made here.

What do we find in the evidence as pointing to this man? It is not necessary to state what each one has said, but only to mention those things we expect to prove. It will be admitted that Phair

was acquainted with and a frequenter at the house of Mrs. Freeze. This is not denied, and cannot be questioned for a moment. He even admits it himself. Where is John P. Phair known to have been the last known of him prior to the murder? Thursday at Castleton with Mrs. Freeze, Saturday night at the circus with her, and on Sunday morning he is found coming from the direction of her house and passing Jno. Jordan's place at about seven in the morning. It is a circumstance which we have a right to show tending to connect him as a visitor of the house, and in the habit of spending his nights there; find him on intimate relations with this woman. He was not at work Saturday or Monday, and not at his lodgings from Saturday noon up to the time of the murder. Where was he? That is the question for us to consider, and is well for this prisoner and his attorneys to answer. Where was he Sunday night, Monday, and Monday night? If he had been anywhere on God's footstool but in that house, they would have attempted to show it. They cannot escape your finding and believing John P. Phair was at Mrs. Freeze's house Monday night. If he had been anywhere else they would have shown it. His story is that he went to Brandon to the circus on Monday, came back on the night train, retired at the Berwick House and stayed there till 4.30 A.M., when he went to Boston. Will that account do? Five thousand people from Rutland and Addison counties, where he has always lived, were there, and could not he have found a dozen men to come and swear where he was that day? He must stand charged of being in Mrs. Freeze's house. He has made his own bed, chosen his own fate, and he must abide by it. We feel authorized in saying this, and he must have been there. If he had lodged with Barnard or any of his fellow-workmen, or even in the lowest dens of infamy, they would have brought parties here to tell you so. We might refer to the fact that Oliver J. Cain was at Brandon at the circus and came home in the same train, went to the same place from the same place as Phair claims he did, and did not see Phair. This evidence has its legitimate weight, and does not stand alone. We find that his bed was not occupied from Friday night until the murder. Will they ask you if a man could tell whether a bed had been slept in by appearance? Such a question is an insult to your intelligence. You remember what Mr. Hotchkiss said in the matter. Phair was there at Mrs. Freeze's house from Sunday night until committing the deed; nobody saw him elsewhere; so far we find him on terms with Mrs. Freeze which entitled him to be there night and day. Whether the house is reputable or otherwise, we find him there in season and out. We assume he was there and that it is his duty to show where he was. Especially so when we show that he trafficked in a foreign market the goods that belonged to her; important that he should show where he was when the deed was done.

He had an opportunity to do this murder. Right here, when we show that the deed was committed and this man in a position to do it, we have taken a long stride in fixing responsibility upon the prisoner at the bar. Another fact is that it was not inconsistent with the man to do this deed. Are we charging him with anything he

could not do? We are not permitted to show his history unless they put evidence in with regard to it. They have not done it. There is volumes in that fact to forever condemn and damn the man who is charged under such circumstances. Here is a man charged with a foul deed, and no man can they find to come and say the crime is inconsistent with the man. God have mercy on the soul that there stands before his fellow-men! Such evidence is damning, both here and hereafter. It is not claimed but what his counsel have done all they could have done for their client, and had there been a man, woman, or child that they could have brought to show this they would have brought him from the ends of the earth. But this man belongs here, in our own Green Mountain State, ashamed as I am to say it. They could not go far before they found those who have known him from his crib to middle age.

But we are not to leave him there and guess the rest. It is not necessary to infer anything, but we can go farther along this network of circumstances which he has woven around himself, and, thanks to those who have so well assisted the State's Attorney in the matter, we find in his possession, in a foreign market, the property of Mrs. Ann Freeze, and find him parting with it for a trifling sum. How do we show this? We find him arriving in Boston at 2 P.M. on the 9th of June, from his own account. And here we may speak of another fact that the government claims. They have put evidence in to show that he went to Providence. What mistakes a man will make when he endeavors to cover up his crime! When inquired of he says he has been to Providence; sharp, shrewd, and calculating, he had told somebody of going, but had forgotten to settle up with his employers here. He says he went from Fitchburg depot in Boston to the Providence depot. He stops at Providence depot, however, for if he had gone farther he could have shown it. He tells a story absolutely false and proven to be so. He says the fare from Boston to Providence was \$3.25, whereas it is but \$1.25. Is there any contradictory evidence from those with whom he talked? None. He told them when he was arrested that he had not heard of the murder; he had been to Providence. Within three hours a man comes forward and says he read to Phair an account of the murder at Fitchburg. Phair had forgotten that his paramour was murdered. He has made his bed and marked it all along with crime, and furnishes even the rope to hang himself with. John P. Phair had a definite account of that transaction such as he would not forget, and yet says when arrested he never heard of it before. Forget it!

In the valise is found a new shirt, unworn. When inquired of he says he bought it of Mr. Haven, at Vergennes. Why did he not tell the truth? Because it would undoubtedly have told that he was in Boston. When the shirt is exhibited in Vergennes they say they never had such a shirt in the store for sale. There is no chance for mistake. He knew Mr. Haven; was born and bred in Vergennes. Link by link he is forging the chain which must inevitably swamp him. That face never confused, that mind never doubting, that man never troubled; unblushing he laughs with

those who laugh, and jokes upon his own trial for murder. Look at that face and it stands patent there; a face uncommon, thank God! He knew what he was doing. There is no feminine weakness to account for these false stories. He was wittingly and understandingly forging those chains about him. We think you will be satisfied that he did not go to Providence. He undertakes to tell his lodging-house, and describes directions for the purpose of making proof that he was not in Boston. Would there not have been somebody here to tell us if he was in Providence? This is no trifling suit, but a man tried for his life. John P. Phair accused of everything else cannot be accused of being a fool, and therefore can prove himself being at Providence depot. The prosecution have a right to assert he was not at Providence for want of evidence as to his being there. Is it of no consequence? It is of the greatest consequence, vital, life-enduring consequence to him, worth all his life is worth. Could they have shown that he was there it would have saved him, so easy would it have been.

We will now show a branch of the case which connects this man directly with the crime. It is incumbent upon us to show several things about this property in order to show John P. Phair to be the man. We have shown that he parted with that watch to Myer Abrahams, but don't care to unless it was Mrs. Freeze's property. But if he did, these two things are shown: no jewellery is found in the ruins, and that in these thirty-six hours Phair parts with the jewellery. This evidence points right at the man. We have shown it in a way that no one will doubt it for a moment; not only the watch but all this property. How about this watch? There are some things left uncertain, but that watch has stamped upon it a certainty. There are no two watches of the same number and same make; we proved that the watch was found at Myer Abrahams', pledged on the afternoon of the 9th; found, identified, and brought back here with Myer Abrahams. He is committed to jail and identifies his man on the spot. Have they the audacity to question that? There is some questions that they *can* raise, but *there* is a piece of property that they cannot ask you to believe is not Ann Freeze's watch. They may ask you to believe that it was not pawned by this man, but upon that point God Almighty has fixed his seal. If a man had the best character in New England, however high in the scales, and the question depended upon a piece of evidence which is now submitted, his character would not save him.

No doubt about it, as he says on the stand. So say they all with regard to property. Are the other side in a position to criticise the testimony of Myer Abrahams, James G. Pierce, John Donovan and others? Their testimony was advertised three months ago. They could have gone and tried to prove its unreliability, but they have brought nobody here. Had there been one of the seven from Boston whose testimony was not true they could have endeavored to criticise it. Will they undertake to call them Jews? They will make little headway there. Their business is a study of the faces of men. They never mistake in dealing with strangers; their only protection is in being cautious and careful, weighing them in the balance of discrimination. All these men

show a degree of intelligence and minuteness that entitles them to the fullest credit.

When "E. F. Smith" pawned that watch he claimed to be stopping at the Adams House, and told a story about his sister. We find next day he pawned a shawl and opera-glasses at J. G. Pierce's, signed a receipt for the same; that receipt is before you. They find him at the Adams House. Before Messrs. Stearns and Thornton left Rutland the second time, they procured Phair's signature at the jail, and then he wrote under it "E. F. Smith, St. Albans, Vt." These two signatures stand proved as being the writing of the prisoner. There his shrewdness left him and he forged a chain which helps us on in the march of justice. That he did it voluntarily and in presence of M. G. Everts and others. That is a chain of evidence which no character could stand.

They found he occupied No. 61 at the Adams House; circumstances are terrible, swift, and damning when we follow this chain of evidence along; find it complete, overwhelming. Not only he was there, but we find Mrs. Freeze's shawl left in room 61; find the half-shawl in a wardrobe; it is brought here and shown to you. Its counterpart is found with Dora Wilson, who swears it was given her last winter by Mrs. Freeze, and that she cut it in two. Evidence is conclusive that it was formerly possessed by Mrs. Freeze; E. F. Smith must have been somebody that had something to do with Ann Freeze. Armed and equipped with this writing by the prisoner — unfortunate for him but fortunate for the ends of justice — they find he registered his name at the Adams House as "E. F. Smith." Look at the signature on the book, then look at the receipt, and then look at his own signature made in jail!

This multitude of facts and straws make up what we call circumstantial evidence, which is stronger than the testimony of men. Men will lie; men will forget; but circumstances never. We ask you to take this evidence for just what it is worth, and it would hang a better man than John P. Phair. Aside from this hand-writing, we bring these men to speak of the identity of the man. John Donovan, Jr., swears with certainty. Is any man liable to forget that face? Never! Not one in two thousand are like him. His face is not an ordinary face, but a marked face. They bring in George W. Stewart and wife, reliable witnesses, to state that they think it is the man; they had not seen him before nor since that time; and how much more likely that John Donovan and Myer Abrahams, who had so good advantage to see him, should know him. When we come to connect it with this hand-writing on the wall, I feel you are entirely certain that John P. Phair is the man. It is a satisfaction to know that no such man as E. F. Smith of St. Albans was there. Does John P. Phair bring any one here to show that there is an E. F. Smith, of St. Albans? What is the conclusion? That there is no E. F. Smith, of St. Albans. If otherwise, he would have been here. E. F. Smith is a myth, and they know it. We think you must be satisfied that E. F. Smith and John P. Phair are one and the same person.

Leaving these writings and testimony, let us look at the motive for doing this act. We find John P. Phair short of money time

after time, and we find Ann Freeze with large sums upon her person. Did not this man know that she had money? Then there is one thing they lay stress upon, "You found no blood." Do they want us to find blood after these evidences? Thank the Lord again. We find this man there not as an ordinary marauder or robber; he was then occupying her house and bed. That bed stood with the head to the south, filling the alcove on the left side of the room. The stabs are on the right side of the neck, and the face consequently must be turned towards the wall. There, sharing that woman's house and bed, with the devil in his heart, he gets up in his night apparel, uses whatever weapon he can find — God only knows what he used — to take her life, while she was sleeping.

We find a razor in the ruins and a razor-case in his trunk, but no razor. Dora Wilson says she never saw a razor at Mrs. Freeze's; but they bring up a man with a fragrant reputation, who says he saw a razor there twice. This testimony is subject to severe criticism. In regard to this reward, if none had been offered this crime would never have been fastened upon the murderer, or have been traced out in all its present completeness. If men take up a case and follow it as these men have done, they are not to be sneered at, but rather entitled to the thanks of the community.

The Court here adjourned for dinner, and at 2 o'clock, P.M., Mr. Ormsbee continued his argument.

You are assured this is no pleasing task to claim before you that any man is guilty of the crime as charged of the respondent. We only do a duty we owe to the State, and to others who are a part of the State. We have called your attention to nearly all the principal points in the testimony, to all articles and instruments found and put into the case, except this bloody key. It was found in one of the doors of Mrs. Freeze's house. No one would take a bloody key and put it into a door after it was taken from the house. The blood upon it is matter for you to consider. It is not my purpose to revert further to testimony, even in a collected manner. It is all before you; no serious complication that you cannot understand; it is all fresh in your minds, and will not escape your notice. It is necessary to say your duty is a serious one, or one not often devolving upon a Rutland county jury. It is trying a man for murder; and your duty is plain, whether satisfied on the testimony or not. No considerations of sympathy, how much they may appeal to you under other circumstances, should be for a moment weighed by you. It is stern, unrelenting justice which is demanded at your hands. Be just before you are generous. Our sympathetic natures are apt to give way to justice and its demands, and we only ask you to act strictly on your oath, and we shall be satisfied; ask only your decision on the evidence presented by the State.

Hon. D. E. NICHOLSON followed with the opening argument for the defence.

What evidence is there in this case to show that this man was present at the time the crime occurred, and that if so, any extraordinary occurrence had arisen, as there might have done. A des-

perate woman might be induced to rise in a time of exasperation that might have moved a man, in self-defence, to commit this crime; and there is evidence of a quarrel in which there were three participants. Who knows but that he might have struck a blow in self-defence, and then committed the crime of arson to cover up the crime. But this would not be a murder in the first degree; and we call it to your conviction that it would be more natural for a man to defend himself than to make an assault. The prosecution assume that murder has been committed, and that this is the man. I ask from you a more cool assumption for each one of the circumstances in the case, which must be proved beyond a doubt. There are a few causes incidental to the case that must be proved by that careful analysis of which you are the judges, before you condemn a man to an untimely death. There are a few circumstances that must be made clear. You are not going to convict a man purely upon circumstantial evidence. If Mrs. Anna Freeze was murdered, you must prove who did it. There are a hundred men in this community who were equally capable of doing that crime. Who knows but that some man who wishes to injure this man committed the crime which they are now trying to prove against this man. Would a man possessed of any brains, that had been as open in intercourse with this woman as has this man, would he have been likely to commit this crime as a man with soft hands, one who would not work, but who, in the shades of night, visiting her house, and seeing her money and valuables, coveted them; would this man at the bar have been more likely to commit the crime than he?

The prosecution must satisfy you that John P. Phair and the same E. F. Smith are one and the same person. If he had those goods it is no sign that he murdered her, and if in the sworn evidence any one of these links are broken, the case goes down. When they prove to you all the twelve cases, if there be any doubt in your minds in regard to any one of them, he goes free and you are to be careful that no link is lost.

Gentlemen of the jury, do you know beyond a doubt that Anna Freeze was not murdered? We have got beyond those days when men were convicted of murder before a murder had been committed.

Do you know that she is dead? You are to be satisfied that she is dead; and you are not to hang any man until you have gone over the entire ground. What is the evidence to show that she is the same person whose remains were taken from those ruins? Were it not for the dental tooth taken from the ruins, that Dr. Lawton dare not swear to, you have no evidence. He dare not swear to it, and dare you? Is there not really a doubt that the tooth was not hers, and if there is, the identification is not proved. Here are a mother and sisters who have had the last, long, lingering look at the burned and charred remains, and they dare not swear that they are the remains of the daughter and sister.

We claim that the trip to Boston and Providence was taken in pursuance of an original plan, as persons that have been intimate with him for a long time have sworn. You don't know who com-

mitted that crime or when the murderer left town; he might have left on the midnight train. The fire was kindled beyond all question by the murderer who designed it for a slow fire. We don't know by what road or what way the perpetrator of that crime went to Boston. Had Phair committed that crime he would not come back here, knowing that the officers of the law would take him into their clutches. If he had been guilty of this crime would he not have kept clear of Rutland people, and yet when giving an account of his absence he tells of riding with Conductor Stewart, who, upon seeing Phair, identifies him as the man.

If one drop of blood could have been found it would have helped the case of the prosecution, yet not a drop has been discovered; they claim that by being in certain positions, blood could have been drawn, so that a person would not have received any on his person. They claim that there is no necessity for blood. Yet they take a key on which there is a drop of rust, and the garments of the accused, but no trace of it can be found. They ask you to believe that he threw the pocket-book away which the boy thinks that he had, but cannot swear to, because he only had \$5 on his person when arrested. Gentlemen of the jury, he had no more money than that because he was not the man. He spoke very ably upon the point of the hand-writings exhibited, and closed with an appeal to the jury to acquit the prisoner.

#### COL. VEAZEY'S ARGUMENT.

*Gentlemen of the Jury:*—When Mr. Nicholson arose to address you it was almost the first time since the prisoner's arrest that any voice was raised in his behalf. Last summer a great crime was committed in our midst. The great excitement that attended it occupied the attention of all, and the great reward offered for the detection of the perpetrator stimulated the imaginations of those who had nothing else to do in propounding "theories" of the commission of the crime—who did the deed. Phair had been seen with the woman, and had gone away. On the strength of that he was arrested. Reward-seekers go to Boston and return with some old shawls and opera-glasses, the remnants of the fire; Phair had pawned them in Boston, it was said. Upon that public opinion did not smoulder as the fire did in the dead woman's house. It burst out in a flame against this man. The press fanned it. The investigation begins. The State's Attorney, with Vermont at his back, and reward-seekers with \$2,500 before their hope, proceed to arrange their case. The man is in prison, poor and friendless, and ignorant of what is being done outside. He cannot counteract their work. Is it strange that this tremendous power should have been able to array a set of circumstances against this man? Is it strange that these interested parties should have been able to build up a public sentiment against him? Is it strange that many weak-minded people have yielded to their positive assertions of his guilt? Would it be strange if the excitement and indignation kindled in the thoughtless mob should cry out, "Crucify him?" But, fortunately, he is not to be tried by a mob, nor by interested reward-

seekers, nor by ambitious officials; but by you, gentlemen, a jury of his peers; men whose intelligence lifts them above the howls of the mob; men whose judgment is not formed by the outcry of these people; men whose minds are capable of appreciating and investigating facts; men who will not fear to do exact justice between the prisoner and the State. You are his refuge, and you will be his succor. From you I feel confident of a patient listening. I come, too, with confidence that I can demonstrate to you that the prisoner must be acquitted. This is no flippant boast, nor said to influence your minds, but a conclusion attained after a deliberate review of the law and the evidence. I assume no greater burden than any lawyer could sustain. There are two chief propositions for the State to establish: First, that Anna Freeze was murdered; second, that the prisoner murdered her. These two principal propositions embrace many subordinate propositions which I will state in the course of the discussion. The evidence is all circumstantial, and the difference between this kind of evidence and positive evidence you doubtless know. The law has carefully guarded against error where circumstantial evidence is relied upon. The Court will give you the law applicable, but that you may better understand, I will state some of the rules as I understand them. (1) Great care and caution ought to be used in drawing inferences from proved facts; it must be a fair and natural, and not a forced and artificial construction. (2) Each fact necessary to the conclusion must be distinctly and independently proved by competent evidence, and in criminal cases beyond a reasonable doubt. (3) All the facts proved must be consistent with each other, and with the main fact sought to be proved. (4) The circumstances must be of a conclusive nature and tendency, producing in effect a reasonable and moral certainty that the accused and no one else committed the offence charged. It is not sufficient that they create a probability, though a strong one; and if, therefore, assuming all the facts to be true, which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of the accused, the proof fails. (5) The circumstances should to a moral certainty exclude every other hypothesis. In the case of murder, the evidence must not only prove a death by violence, but must, to a reasonable certainty, exclude the hypothesis of suicide, and a death by the act of any other person. This is to be proved beyond a reasonable doubt. It is not enough that you believe him guilty. You might believe this from various causes. Nor is it enough to believe the chances are that he is guilty, or that you think it more likely that he is guilty than innocent. The test is, are each of you, individually, convinced of his guilt, so that you are ready to act upon that conviction, independently of each other, so that you would act upon it in the highest concern of your own? You must not lean upon each other and think your individual responsibility for error will be small. The question for each one is, "Am I morally certain of this man's guilt." If not, you must acquit. They will tell you circumstantial evidence is conclusive. This is true if each circumstance is conclusive, and all lead to the result and exclude every other hypothesis.

Having now considered the nature and the means of the proof required, we are prepared to examine the evidence. The circumstances upon which they rely to prove Phair guilty of the murder are, (1) His intimacy with Mrs. Freeze. But this circumstance is not inconsistent with his innocence, but it is evidence rather of innocence. Would he have appeared in public with her had he designed murder? But he was not shown to be with her after the circus. The nearest they get him to her after that is 60 or 80 rods away from her house, and going in a direction from it. (2) Absence from his room Sunday and Monday night. In the first place, it is not proved beyond a reasonable doubt. It is proven that he frequently stayed with Barnard. It is shown that some one else was with Mrs. Freeze on Sunday night and Monday morning. (3) His not being seen on Monday. This is negative evidence, merely. Probably the State could bring on plenty of witnesses to swear that they did not see any of you gentlemen on that day. The testimony of Cain is negative and worthless. But Mrs. Freeze was seen if he was not. (4) Going to Boston. That of itself proves nothing. Thousands went. There were no suspicious circumstances connected with his departure. His appearance was natural. He went straight through Boston to the Providence depot. They prove that his course corresponded exactly with his subsequent statements— even to the description of the depot in Providence. The State also proves that his trip was taken in accordance with a long expressed design of going to Providence to get work from the American Screw Company. Therefore, we find that this journey was in accordance with an expressed purpose, with a natural purpose, and every circumstance attending it rebuts the presumption of guilt unless he is identified in Boston. As to identity, there is the greatest liability to error. Persons often so greatly resemble each other that intimate friends mistake them. But liability of mistake, of course, increases strongly among strangers, and where opportunity for observation lessens.

This man was seen as an ordinary customer—for a few moments only— among many other customers, in a dingy pawnshop, and with a dress of most ordinary kind. The attention of witnesses was not called to this person for several days, and then photographs were shown them of Phair, and he is minutely described and all the circumstances explained. Then these men come up here and go to jail and pick him out. The identification will quickly be seen to be a farce if the testimony is considered in detail. 1st, James G. Pierce is a Howard-street pawnbroker; he has from a dozen to fifty customers each day. The man Smith who did the pawning was in the store about 10 minutes. There was nothing peculiar about his dress; Pierce remembered that his suit was light gray, which is a very common color in the summer. He does not remember the color of the hat. He saw Phair's photograph before coming to Rutland, and talked about him with Stearns and Thornton. He then went to jail, saw Phair, and now says he is the man. His identification in this court amounts to nothing. He swears that he never can be mistaken except in case of twins. With him resemblance is nothing, twins everything.

Morris Livingston, the next witness, is another pawnbroker, or dealer in old rags. He happened to be in Pierce's shop at the time and witnessed the transaction. He did not have his attention called to him in any way. He had no interest in him. Four weeks afterwards he is brought up here by Stearns and Thornton; is shown a photograph; goes to the jail; Phair is brought out between two old men, and lo and behold! he identifies him. He identifies this man, but he has lately forgotten Justice Everts, whom he saw for three hours. Yet he makes a study of faces, as Ormsbee says. Isaac Smith is the next man who makes a study of faces. His attention was called to this man by Pierce, on the other side of Howard street. Pierce told him about the fire and murder, and then he comes up here, sees a photograph, goes to jail and recognizes Phair. And yet he cannot pick out Judge Everts before whom he testified. Meyer Abrams is another pawnbroker. Stearns and Thornton showed him a photograph, told him about the murder, and he picks out Phair. There was no one else in jail dressed in light clothes or who looked like Phair. He says he never makes a mistake.

And now comes Samuel Ehrlich, who bought the rings. After the usual preliminary explanation from Stearns & Thornton, he says Phair is the man. And yet, when his attention was called to this matter in Boston, he had forgotten all about the rings, and could remember nothing about the transaction. Christian A. Voght then says a man offered these same rings to him, but he sent him to Ehrlich. After he has had the man described to him, he also picks him out in jail without any test. The last witness on this point is Mr. Donavan, the hotel clerk, who saw him at the Adams House, under the most favorable circumstances to picking him out, and yet he will not swear that Phair is the man. They describe light clothes, which are worn by nearly every one, and a hat like the hat of nearly every jurymen. He had an umbrella when he went away and returned, and yet not a Boston witness testifies that he had an umbrella. And then he had a box of collars and valise. Who goes to Boston without collars and valise. Then look at the characters of most of these men. Their business is that of pawnbroking — a life of fraud. Their race bears the curse of God, because they crucified his Son eighteen centuries ago, and have been crucifying him ever since by their frauds and misdeeds. They don't regard an oath administered in the Christian form. To hang a man on their testimony would be to murder him. You would not trust any of them with five dollars. You are required to find the fact of his identity beyond a reasonable doubt. Can you say you are so convinced? It is better that ten guilty escape than that one innocent suffer, not only on account of the man accused, but for the personal safety of all. And it is better that a guilty man escape than that he be convicted in violation of the rules of evidence and law. Will you violate the rule of doubt to convict this man, because Ormsbee says he is of a bad character? No peril to society and individuals equals that of a disregard for established rules in the administration of law. Let Courts and juries override these rules, and there is no safety. It is easy for

adroit men to weave a network of suspicious circumstances about a man; but when Courts and juries subject them to the rigid test of long-established rules; the chain is broken. We are in danger of being affected by surrounding circumstances. We do not need to be told the thoughts of men. The eye, the countenance tell us. We know many men are interested in procuring conviction. The positive in assertion are committed, the weak-minded are overcome. I don't know about the sentiment of others, but as for me I feel that many would jump at the conclusion of this man's guilt. I ask you to guard against this silent influence. The history of criminal jurisprudence is full of illustrations of mistaken identity. (Col. Veazey here alluded at length to cases of mistaken identity.)

But they say, We have the hand-writing. This is simply bolstering up a weak case with a weaker kind of evidence. There is a hundredfold more chances of error in identity of hand-writing than of person. It is often difficult to detect difference between the writing of different men. Boys copy the writing of the same teacher, and write like him and each other. This writing could easily have been forged, so that the resemblance would have been as great. This is a very common hand; the ordinary hand of a laboring man who can write pretty well. It is a singular fact that, although this man did not get there until 5 o'clock, very few were registered on that day before him, and his name is at the bottom of the page. There are usually many registered for dinner, but on that day there were very few. Why is it the last on the page? It would give an opportunity for forgery. Think of the polluted source through which this comes, — men working for the \$2,500 reward. If Phair wrote that name on the register, he would not have written it on a paper for the State. You cannot find that this is his writing beyond a reasonable doubt. But if gentlemen think this is a strong circumstance against him, I will offset it by a stronger one in his favor. The fire was not discovered until nearly seven o'clock, and yet if Phair set it, he must have done it as early as three. This leaves four hours for the fire to smoulder in a balloon-framed house, which would burn like tinder. Gentlemen, it is impossible that this fire could have been kindled by him. If Phair was in Providence, he could not have pawned the goods; and he described the Providence depot so exactly that there cannot be very much doubt here. If he was the man who pawned the goods, what did he do with the \$50 he received for them, and the money which he stole from Mrs. Freeze. Every effort has been made to find it in Boston and among his friends, and no trace of it has been discovered. Their theory that he threw it away is absurd.

The report in the Boston "Journal" was no news to him, if he murdered her. There was no more reason for him to throw that money away after than before that. The man who would commit such a deed, walk back in the face of arrest, and do as Phair has done, would not throw away the whole fruits so readily. This theory of the wallet is a humbug. All these things show that he was not E. F. Smith. But there are also other things. No trace of blood could be found upon any of his clothes. It would have been im-

possible for him to have cut the woman's throat without bearing some trace of blood. The razor theory is so effectually exploded that it is useless for me to consider it. Then, would Phair have come immediately back if he committed the murder? He knew at Fitchburg that it was discovered.

The State's Attorney promised some contradictory statements. Has he proven any? Not at all. They have not proved that he did not go to Brandon, nor that he had a wallet at Bellows Falls, nor that he did not have business at Vergennes or Elizabethtown. But even if his statements were contradictory this should have little weight. An innocent man would be apt to misstate either through excitement or fear. His whole conduct has been consistent with innocence. He has answered all questions, and did all that he was asked to do. He played his accordion to the girls at the Berwick House, Sunday night. Would a man with murder in his heart do this? They said they would show he had no money. But it is proven that he had \$50 a few weeks previous. And they show none paid out. On the other hand he seemed to be saving money for a trip to Providence. They have not proved that he did not borrow the money of the apple-tree man as he stated. They undertook to show that he lied about the fare to Providence from Boston.

The manner of the witnesses in testifying on this point, shows that they lie. The amount Phair stated was for the round trip, and with this explanation he told the truth. But an innocent man when placed in circumstances of danger and suspicion may resort to deception to avoid the effect of such proof. This is a case of circumstantial evidence, and many of the circumstances unexplained point to the guilt of the accused, but you cannot be too careful in deciding upon a man's life on such evidence. There have been men convicted of murder in this very State when no murder had been committed. There have been many men convicted upon circumstantial evidence stronger far than this, and subsequent events have proved them innocent. You must remember the character of the woman, that her house was the household of sin, the resort of the low and the vile, the likelihood of a quarrel at such a place, and that she displayed her money and jewelry to all. I now leave the prisoner in your hands, with the assurance that you will grant him exact justice. I have done the duty assigned me. I may in the heat of argument have overstepped the bounds of sound reason and correct statement, but if so, I crave your pardon, and that you will not charge it against the prisoner in your deliberations; but demand the same of him who follows. Require from him a fair and exact statement of the evidence. I do not fear a fair presentation of the case for the State. Many sad thoughts crowd upon my mind as I leave this case. I remember the terrible embarrassments growing out of this man's poverty. I see clearly how much more could have been done with time and means.

The prisoner had no money, not even his liberty, to prepare a defence. I recall that widowed mother away in a distant city, old, infirm, heart-broken, realizing the peril and destitution of her son,

yet powerless to help him. I know that that boy is as dear to her as though no stain was upon him. I know she could not if she would, and would not if she could, smother the maternal affections that make a mother so dear. Gentlemen, shall your verdict carry joy or sorrow to that anxious, broken heart?

I remember, too, the sister, alone in another distant city, young, educated, accomplished, struggling to earn an honest livelihood, yet drinking the gall of bitterness to the very dregs. Oh! if you could see her as I have, crushed to the very earth as she heard the clanking of the bars of his dungeon, where the light of day never penetrated, I am sure you would feel as I did, that he must be saved for her sake. Shall your verdict press the iron deeper still into her young heart, or shall it rather lift this crushing sorrow from it? Gentlemen, into your hands I commit the destiny of the prisoner and the bleeding hearts of kindred, who are as dear to him, and he as dear to them, as your mothers and sisters are to you. I do not ask you to forget justice and remember mercy only. I ask you to temper justice with mercy. It is an attribute of God himself. "And earthly power doth then show likest God's when mercy seasons justice."

#### ARGUMENT OF COL. C. H. JOYCE.

In opening the final argument, Col. Joyce made a critical review of the arguments of the defense, and alluded to the fact that the position of the State had been fully set forth by the State Attorney. Col. Joyce said:—

This is an important case, one of the most vital importance to the respondent, and not only to him, but to the community. He is not the only person interested; the laws are not made for the punishment of the guilty, but to protect the innocent. If this man is allowed to go quit here; if twelve men, with all this testimony introduced before them, and with such a lack of any defense, can turn him loose upon the community, it is a matter for very serious consideration. Has there been a man in the court-house during this trial could rest quietly upon his pillow and feel safe if this man was allowed to go? Think of it, gentlemen; it is a solemn matter. Your verdict must be of vital consequence to this man; but the consequences are not with you, or me, or with the Court. It is our duty we must do; our consciences must be satisfied. We intend to be right, to look at the case squarely, and back up our proof by argument. This crime is the greatest of all crimes, and the feeling in this community sufficiently indicates it. The penalty of this crime is the same as was handed down to the children of Israel from Mount Sinai. "That man who takes the life of his fellow-man, shall his life be taken." Such has always been the law; it is the law of Vermont to-day. Of course the penalty calls upon you to give it the most careful attention and candid consideration.

The gentleman who opened this case started off by saying this woman who has been murdered was of bad reputation.

That is hardly inside of this case. I think it is only necessary to believe simply the evidence against the woman's character, and all

that has been produced has been the testimony of Peter Lavigne and one other man as to driving gentlemen down there in the night. He starts off with saying it is just as criminal to murder her as any one, and then says the community suffers no loss, leaving the inference that this man was commissioned to become the executioner of all women who have departed from the paths of chastity and rectitude. I have nothing to say about this woman. It is your plain duty to blot out of your mind entirely all such ideas, and try this case on an entirely different theory than that. What would be the result if we adopted a theory of that kind? Know you not what a slight thing it is to ruin a woman's character for life? One little insinuation or slander upon the street-corner will ruin a woman for life who may still be as pure as the snow on yonder mountain. She is turned out on to the cold charity of the world, while her seducer and betrayer is petted and taken into the best circles of society. I am well justified in saying to you to keep strictly within the evidence in the case, and not go outside of it. This man is not to say who shall be slain and who shall not. How know you the broken vows, the terrible temptations, brought to bear upon that woman which induced her to lead the life she did, while the villain takes front rank in some Christian church? Let us not look all upon one side in investigating this matter.

Here Mr. Joyce closely reviewed all the testimony in the case, but as a clear review of the evidence for the prosecution has been given in Mr. Ormsbee's argument, it will be unnecessary to repeat it here. He closed his eloquent argument as follows:—

My sympathies are with that man, but I have a duty here beyond all human sympathy. It is your duty to take this testimony and weigh it in the most careful manner. The duty now rests upon you, which I hope you will never have to do again. Never but once before was I ever put in a position like this; now it rests with you. The question to determine is, whether the prisoner is guilty or not.

That being that was killed there was a human being; that being was Anna Freeze; that murder was committed by the respondent. I can come to no other conclusion. He had her property in his possession and has not accounted for it.

Remember the people of this community have interests at stake here on this matter. The man who would go coolly to work and commit this act is not too cool to do the same upon the best lady in the land. Look at the interests of the community in the verdict. They are here to-day to manifest their interest in the case and the principles of the case. I leave the rights of the community in your hands, trusting that you will do your duty to yourselves, to your children, and to the community at large.

At the close of the argument of Col. Joyce, Judge Wheeler began his

#### CHARGE TO THE JURY.

There has been so little controversy about the law among the counsel in the case that it is not necessary for me to say anything concerning that, and will only speak upon the facts as presented.

That only is in your province. I have but little to aid you in the performance of your duty, but will make a few suggestions and still do what I am bound to do.

Murder is the unlawful killing of any creature with malice aforethought, expressed or implied.

It is divided into two degrees, and it is important to define the difference. Now, by the statutes, murder by poison, by lying in wait, or in perpetrating or attempting to perpetrate by arson, rape, burglary, or any wilful premeditated killing, is murder in the first degree.

There are two things to be considered: the *corpus delicti*, that is, the establishing by clear proof that somebody killed Anna Freeze. It is first necessary to establish the fact that there was such a person as Anna Freeze; as to this there is no dispute. It makes no difference as to her moral character — it was murder in any event as far as character goes, and there is no excuse for the killing; the crime may even be considered greater in this case, where the person is considered as being unprepared for death. The killing of a person sick unto death or sentenced to death is unlawful killing, and that constitutes this crime.

Malice means with a wicked mind. The fact of death, if found killed unlawfully, is improbable with the idea of killing herself; whether any property was to be gained by taking her life, and all these other circumstances that attended her death, are to be considered as to whether she was unlawfully killed. Now, if these facts are made out, then it is murder in the first degree. If there was a deliberate setting about, with a plan to take her life before him and the carrying his intentions into effect, that is murder in the first degree. Or, if her life was taken in the act of perpetrating a robbery upon her, because robbery would be felonious, taking by force. In this view, elements of robbery are to be made out as to whether anything was taken from her against her will, in the act of murder, that would be murder in the first degree. You must find that she had property in her possession and taken by such force as to overcome her power to keep possession, and if murder was committed in doing that, it would be murder in the first degree.

Also notice, if her life was taken in attempting to commit arson. The burning of a dwelling-house is arson by felonious attempt. Arson and robbery do not make murder, but the more important question is, whether her life was taken in committing robbery.

If there was murder in fact, without these other attending circumstances, then it was in the second degree.

And if there was killing without the malice aforethought, it is manslaughter.

It is very important to the respondent that you remember and understand these different degrees.

I have been speaking of the committal of the crime by *any person*, whether the main offence is made out and whether one degree of crime has been committed.

(Court then took a recess until seven o'clock in the evening when the judge concluded his charge.)

It is necessary that the prosecution make out that some one committed the murder, and the respondent cannot be convicted without. If a crime has been committed, that is, unlawful killing, then the question for you to decide is, whether respondent did it.

The evidence to be relied on in this case is entirely circumstantial, and still competent to convict him if made out; is competent to convict and is of the highest authority to show the guilt of the respondent. It is not enough that the circumstances are consistent with guilt, but they must make the guilt of respondent apparent beyond reasonable doubt. Each fact and circumstance is entitled to consideration, and no fact must appear inconsistent with the guilt, so that each circumstance, standing by itself, shall point unerringly to the guilt of the respondent. If so, it is as good as direct evidence, and even better, as persons falsify sometimes. Crimes are generally done in secret, and there is always the fear of false statements by direct evidence.

Now, the principal circumstance that you are to rely upon is, that the deceased was robbed, and that the respondent was shown to have the fruits of this robbery soon after, and gave false accounts of the same. The evidence of false statements alone is not of great weight. If he may have been overwhelmed, or to meet a circumstance apparently against him, or to falsify wilfully. He is not on trial for falsifying, and innocent persons even do frequently falsify if they think necessary to show their innocence.

The great point having been the robbery at the time of the murder, and that the respondent had the fruits unexplained, this circumstantial evidence is an important case for you to consider. Whether she was robbed at the time of the murder? Take up that by itself. Did she have anything to be robbed of? Take that up by itself. If these goods produced were the goods she had then, find whether respondent had them soon after. If he had them at all, that is evidence that he had them soon after. Upon this fact is the testimony of Pierce, Abrahams, Vogt, Livingston, Smith, Ehrlich, and Donovan. Their evidence is to be taken as to whether he had these goods in his possession.

Then there is this entry of his name upon the hotel register and upon this receipt. These are to be compared with his hand-writing, as it is claimed that all signatures are the same. The great point is, whether the respondent is that person. On this point you are to take the testimony of these men, Warren H. Smith, and the bank cashiers.

If you are not satisfied that the respondent had possession of these goods, then he is relieved of a piece of evidence against him; therefore great care must be taken on this point. Examine the hand-writing for yourselves.

If the respondent had these goods and unexplained, that evidence is sufficient, legally sufficient, to warrant a conviction.

The other circumstances proved alone without this would not be sufficient.

That is, if he did not have these goods, I don't think the other evidence in the case would warrant his conviction.

If the prosecution have made out that she was robbed, and he

had the fruits soon after, then take up the others, which, if all taken together point to his guilt, that warrants his conviction; otherwise not.

In the testimony of Von Neida, you must understand that the statement in the *Boston Journal* is not evidence, only in the fact of his reading it to the respondent.

Then the property he had to gain is important, and the motive, as a person would not be likely to do it without one. Consider the evidence of Mr. Hardy, Mr. Richardson, and Mr. Willis, as to the money she had on hand, to show a motive to commit this crime.

No person is supposed to have any personal interest against the respondent. It has appeared that a reward has been offered, and this must be weighed by you, and if a bias is displayed you must weigh that, also how much knowledge the witnesses had on the subject, and whether indifferent on it. This reward was lawful. If there is an interest shown in it by the witnesses, that must be weighed.

The presumption which the case starts on is, that the man is innocent. The prosecution must overthrow that; keep that in your mind constantly in your investigation of the case. To recall, briefly, you must find:—

That a crime, as charged, has been committed.

That the respondent was where he could commit this crime.

That she was robbed at the time she was murdered.

That the respondent had in his possession, soon after, the fruits of this robbery, because *this* is sufficient legal evidence to convict.

If these are made out, does it appear to a moral certainty that the respondent did commit this crime?

If there exists a reasonable doubt, then he must be acquitted. Otherwise, he must be convicted. The case is within a narrow compass.

If you find the respondent guilty, then you must find whether he is guilty of murder in the first or second degree, or of manslaughter. If not guilty, then that is all. Bear in mind that the burden of proof is on the prosecution all the while.

As to the nationality or religion of witnesses, it has no sort of consequence, or as to their business. All testimony is to be considered as to its degree of credit. The respondent is supposed to be innocent until convicted.

One subject suggested by the respondent's counsel: something had been said in the argument that no explanation had been made as to the prisoner's whereabouts. No inference should be made against him because he has not. So far as for himself you have no right to consider; there is no law to make him testify; his silence is not to be weighed. He had a right to sit and prove nothing. Respondent says he was at Providence; if he went, he was gone there when these goods were pledged.

I have not undertaken to call your attention as fully and definitely as I might, as the case has been fully and ably argued on both sides.

The jury in the Phair case retired at 8 o'clock Saturday evening

to make up their verdict. At 11.30 the jury came in and Judge Wheeler directed the clerk to call the jury which he proceeded to do, all responding to their names.

The clerk propounded the usual question: "Are you agreed upon a verdict?"

John P. Sheldon, the foreman, responded, "We are not."

Judge Wheeler asked the foreman if there was any further instruction from the Court, or if there were any points in the charge the jury did not understand.

The foreman responded that the jury did not fully understand the charge in reference to the degrees of murder.

Judge Wheeler then proceeded to explain what constituted murder in the first degree as follows:—

By poison.

Lying in wait.

Murder with intention to commit robbery. There was some of that in this case.

Arson, for the purpose of concealing the crime. There was something of that in this case.

Murder for rape.

Murder with premeditation.

If murder was perpetrated to commit robbery, it was in the first degree.

The jury again retired and returned in about twelve minutes with a verdict of "Guilty of murder in the first degree."

The clerk again called the jury, each one answering to his name.

CLERK.—Have you agreed upon a verdict?

FOREMAN.—We have. Murder.

CLERK.—In what degree?

FOREMAN.—First degree.

Judge Dunton, in behalf of the prisoner, asked that the jury be polled, whereupon, by direction of the Court, the clerk put the questions:—

Q. Is the prisoner guilty?

A. Guilty.

Q. In what degree?

A. First degree.

Each jurymen having answered the questions, the Court placed the prisoner in the custody of the sheriff.

The scene was an impressive one, perfect silence pervading the court-room, Judge Wheeler, previous to taking the verdict, having announced that quiet and order must reign, and that there must be no demonstration on the part of the audience, whatever the verdict might be.

Phair showed no perceptible indications of emotion, save when the jury came in the first time he became very pale, but the color forsook his face but a moment; he quickly regaining full self-possession.

At the January term of the Supreme Court for Rutland County Phair's case was heard on exceptions. As this hearing was entirely legal, and would not possess general interest, and as it is fully reported in the 48th Volume of the Vermont Reports, where lawyers

can readily refer to it, it is deemed best not to give a full report here. A motion for a new trial was also made at the same term, on the ground of newly-discovered evidence. As these affidavits were used on a subsequent application for a new trial, they will all be published there. The exceptions were overruled, the petition dismissed, and the respondent was sentenced to be hanged on the 6th of April, 1877. The warrant and sentence will be given hereafter, under the proceedings for the injunction.

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## CHAPTER II.

### THE REPRIEVES.

After sentence had been passed upon the prisoner, he was then taken to the State Prison at Windsor, where, according to the terms of the sentence, he was to be incarcerated until his execution, on the 6th of April, A.D. 1877. A few months before the expiration of the time of his imprisonment an effort was made by his counsel to secure a reprieve; but this was refused, after a careful examination of the case by His Excellency Horace Fairbanks, then governor of the State. The decision was conveyed to Phair, and he was told that the last step had been taken, and that he must prepare for execution. He had submitted to the governor, on the application for a reprieve, a statement of his case, written by himself, and now that his prayer had been refused, he busied himself in adding to and revising this statement, which it was his desire to have published after his death, as the last words he had to utter concerning the crime for which he was to die. A few days before the arrival of the time fixed for his execution this statement was procured by Mr. E. C. Carrigan, a correspondent of the Boston press, under an agreement, as will be seen by a reference to Mr. Carrigan's affidavit, published hereafter, that it should be published in full, and not until the day after the execution, and on these conditions that correspondent was to have the exclusive right of publication. The statement was then disposed of by Mr. Carrigan to Edwin M. Bacon, the editor-in-chief of the Boston *Daily Globe*, with all the conditions of publication annexed. On Thursday, April 5th, the day preceding that fixed for execution, the editor of the *Globe* ascertained that an abstract of the statement had been procured by the Associated Press for publication in the evening papers of Friday, and as this would detract largely from the value of the statement in full on Saturday morning, its correspondent was urged by all means to secure Phair's consent to the publication of the statement on Friday morning. After considerable urging, Phair finally consented, on the ground that the paper containing the statement would not reach Rutland, the scene of the murder, and Vergennes, his home, until after the time of execution, and it would practically amount to a *post-mortem* publication. The document accordingly appeared in the *Globe* of Friday morning, April 6th, and as it was so extraordinary in its nature, and as a knowl-

edge of its contents is necessary to enable the reader clearly to understand the subsequent events, it is deemed best to publish it in full.

THE "DYING STATEMENT."

"Since my unfortunate and mysterious conviction, I have several times been interviewed by newspaper reporters, who seemed anxious to get at the truth of the grounds on which my conviction was claimed. The most of them were strangers to me, and represented the press of both New York and Massachusetts. At the time they called on me, I did not think that it would ever be necessary for me to make any statement relative to my condition. But now, when I see that a few short days will, in all human probability, end my affliction, I deem it my highest duty to God and man to place before the people the following truthful statement: I am to-day confined in a solitary cell awaiting the execution of a death sentence for the crime of murder, which no being can justly say I have ever perpetrated. Since, and before, my foul conviction I have had most implicit faith in a just deliverance from this great and grievous wrong, of which the Almighty knows I am a helpless victim. But, as yet, I have learned of no change in the so-called evidence against me that will in any way revive my courage. As for the matter of death, it has no terror for me. Indeed, I can hail it as a welcome messenger, knowing that with it will come freedom, Divine justice, and a righteous acquittal before the Saviour of man, who knows my heart and cannot be mistaken. I deeply regret that the conduct of my earlier life was not more closely guarded against the dishonesty which dragged my character into a state of disrepute from which my best endeavors to reform have been misconstrued, laughed, and scouted at by a class whom I can call by no milder name than my personal enemies. The great and crowning mistake of my life was made between the age of seventeen and eighteen, when I committed a larceny on a respectable citizen of the town in which I lived. The act was rash and hasty, done at a time in my life when I was not as wise as I should have been. When accused of the crime, I immediately confessed it, and plead guilty before the County Judge, who sentenced me to six years' hard labor in this State Prison. Many arraigned the judge who sentenced me, and believed he was too severe with me considering my youth. But as for me, I offered no complaint, and accepted it as a just penalty for the offence I had given. On entering the prison where I expected to serve every day of my sentence, the thought of the terrible shame and disgrace I had brought upon an unsuspecting father, mother, and affectionate sisters so sorrowed my heart that it was many days after before I could reconcile myself to my shameful situation. I finally braced up under a solemn resolve, that if it were in mortal power to overcome and regain what I had lost, I should prosecute the resolution to the end of my life. During my imprisonment not a single day passed over my head without kneeling to the Almighty in my lonely cell and imploring His forgiveness and help to strengthen me against any and all temptation in the future that led to dishonesty.

"I was confined among nearly one hundred offenders of the law,

and taught by personal observation and experience a lesson which, in my opinion, can be disregarded by none but the most depraved and abandoned of mankind. Notably associated with these were the sad and violent deaths of two men upon the gallows for the crime of murder, and another awaiting a similar fate, which was to take place in a few weeks after my release from the prison.

“Accused as I am of a like crime, and convicted on evidence that ought not to hang a dog, I cannot help arraigning the partial judgment of a jury who have deliberately conformed to the wishes of unprincipled reward-seekers and prejudiced enemies, by robbing me of all doubt which they knew to have been legally mine. For any one to suppose me guilty, or even capable of such a deed, without direct and positive proof, is a great injustice to me, which I hope time will prove to both my friends and enemies. Think of my dearly-bought experience in this place. Think of the solemn promises I made to my friends on arriving home from here; and above all, the terrible shame, disgrace, and inevitable death which I so well knew would follow such a deed, even had I dreamed of its commission. My accusers have tried to manufacture motives which they claim I might have had in perpetrating such a deed.

“But all such attempts, so far as they relate to me, present no truths whatever. For had I been the guilty party the deed could have been prompted by no other motive than that of the most extreme wickedness, and a desire to ruin myself in this life and my soul eternally. After serving five of my six years' sentence, I was pardoned by Governor Hendee, on a petition presented by my friends. On receipt of the pardon my heart leaped with inexpressible joy, at which I supposed to have been genuine forgiveness and a complete burial of all past issues, and an open way to a future life of honesty and happiness. But, alas! how fallacious are human hopes and expectations in this world. The fact that all I had received this pardon for was for the second time raked up and heralded throughout the Union by the press, for the purpose of firing the public mind against me, was conclusive evidence to me that I had never been forgiven by the people, and that the pardon I had received in the best of faith was a fraud. Of the twelve jurymen who sat on my case, there was not one who had not from time to time read the damaging assaults upon my character, which appeared daily in the Rutland newspapers, from the day of my arrest until my foul conviction. Every scamp who visited Rutland had some new slander to contribute to the hungry editors about me, whether they ever knew me or not. Hearsays of the most absurd and damaging character were freely published. Not damaging because they could not have been proved utterly false, but because of their appearing at that particular time, when I had neither my liberty nor the means to use in suppressing it. Then, too, the enormity of the crime of which I was accused, and as represented by the press, was certainly calculated to set the people of Rutland County against me, that an impartial trial could not be had under the then existing heat of prejudice and excitement.

“In view of all this, and as the time for my trial drew near, I was advised by disinterested friends to petition the judge for a change

of venue, whereby my case could have been thrown into Bennington County for trial. The judge was petitioned without delay, and in response offered as his opinion, that the case could be as fairly tried in Rutland County as in any other. Disappointed in this, I then petitioned the Court for a continuance of my case to the next term of Court, and this was not granted. The Court then assigned me counsel, which I had not been able to provide for myself, and then pressed my trial so close that I had but very little time in which to defend myself against the strongest prosecution the State could possibly get to bear on the case. My counsel, Messrs. Dunton & Veazey, were at the time very busy in other law business and they were obliged to acknowledge their inability to give my case anything like the attention necessary for a proper defense. But the trial was on, and I could do no more than submit to what followed. I hadn't a dollar with which to employ a detective to investigate the strange work which two scheming reward-seekers had for three months carried on with the evident intent of securing my conviction, and the \$2,500 reward, without any regard for justice. On the other hand, as is well known, the prosecution was armed with all the wealth and power in the State, and worse than all, it was aided by perjured witnesses, which made nothing impossible for it to carry. My counsel were very able and honorable men, who, in their efforts to defend me, worked for the true ends of justice, regardless of the mighty dollar which so often defeats it. These gentlemen well understood before undertaking my case that unless I was acquitted I would not be able to pay them one cent for their labor. Still, this did not hold them aloof from their best endeavors to defend me under circumstances wholly unfavorable and discouraging. They expressed much regret at my not having means to employ proper persons to inquire into the character of the Jew pawnbrokers who were brought from Boston to Rutland, and pretended to identify me as being a man who had sold them a watch and other articles which were found in their possession, and afterwards identified as the property of the unfortunate woman. The claim set forth by the prosecution on the trial was in substance as follows: That on the 9th day of June, 1874, Anna E. Freeze of Rutland, Vt., was murdered, robbed, and her house burned to the ground; that on the same day a watch, opera-glass, shawl, and so on, belonging to the murdered woman, were pawned, or sold in Boston by a man giving the name of E. F. Smith, St. Albans, Vt.; that this man registered under that name at the Adams House in Boston, where he stopped on that day and night, and that the man E. F. Smith and John P. Phair were one and the same person. That a certain room in the Adams House was assigned this man by the clerk of that house, and in which was found a lady's half-shawl the next day after his departure from the house, and that the shawl had been identified as the property of Mrs. Freeze. That the hand-writing on the hotel-register resembled and corresponded exactly with my hand, and that there could be no mistake but what it was mine.

“The clerk of the Adams House, when asked if he could recognize me as being the man who had stopped at his house under that

name, said that I looked like the man, but would not swear positive that I was the man; that his seeing me led into the hall between two officers and handcuffed might have led him to think so. This man was not a Jew, but apparently a gentleman. A Jew was then called, who swore positive that I was the man who had sold him the woman's watch for \$20, and that he had given a pawn-ticket for the same. Another Jew swore that I looked to be the man who had sold him a Masonic finger-ring for \$5; still another Jew, that I was the man who had offered finger-rings for sale at his store and that he had declined to buy them. Another man swore that I looked to be the man who had pawned with him a lady's shawl and opera-glass for \$10. When asked if he could not be mistaken as to identity, he said he could not unless in the case of twins. The next and last of the so-called Boston witnesses was one Smith, an ex-convict, who had served a term in the Massachusetts State Prison. This man testified to his having seen me crossing some street in Boston on the same day these Jews claimed to have bought the woman's jewels. J. C. Thornton and N. S. Stearns of Rutland were the reward-seekers and so-called detectives who brought these men to Rutland to identify and testify against me; and how in the world they were induced by them to do such a thing is a matter which as yet I am unable to understand. It was certainly a piece of work which I can never recognize as honest, and I am satisfied that the men never swore an identity on me voluntarily, from the fact that I was not the man whom they had dealt with, and they could not honestly have done such a thing. This Thornton and Stearns had forty-eight witnesses subpoenaed against me on the trial, and from the majority of them was elicited the most of the evidence for my defence; and in all the testimony the prosecution endeavored to elicit from these so-called witnesses there was not a being who could come forward and say that they had ever seen or known of my having been in the murdered woman's company after the evening of June 6th. It was shown on the trial that the woman was seen alive and well by her neighbors on the 7th and 8th days of June, and that she was supposed to have been murdered on the 9th. My trial commenced on the 2d day of October, 1874, and continued until a little past 11 o'clock on the night of the 6th, when the jury, after being out less than two and one-half hours, came in and rendered a verdict of murder in the first degree. Exceptions were then taken by my counsel, and the case went to the Supreme Court on a petition for a new trial. The Supreme Court convened at Rutland the latter part of January, and heard my case on the 3d day of February. This Court refused me a new trial, and offered an opinion that I had had a fair and impartial trial, and that if a new trial were granted me, there would probably be some scheme or other gotten up to clear me.

"To say that I was disappointed in the decision of this High Court does not express it; for I had hoped for redress from this Court, and think now as I did then that Chief Justice Pierpoint must have been strongly prejudiced against me. My reasons for thinking thus are founded on the fact that the judge is a resident of the place where my former trouble occurred, and was the judge who

sentenced me to prison at the time. The Court after refusing me a new trial, then sentenced me to be hanged on the first Friday in April, 1877. Before passing sentence, the Court inquired if I had anything to say why sentence should not be passed on me. I then addressed the Court briefly, claiming that I had been foully convicted on false identity of person and hand-writing, and that as I was then unable to prove my claim to its satisfaction, I felt certain that time would bear me out in the truth. My mind to-day is the same as on that day, and cannot be changed by time nor eternity. I now feel that I have exhausted all honorable and legal efforts in my power to defend myself, and am in no way responsible to my Maker for the loss of my life. How my name happened to be associated with the name of the unfortunate woman is told in a brief sketch of her character by herself. About eight weeks prior to this woman's death I went to Rutland in answer to a call from the proprietors of the Lincoln Iron Works of that place. I engaged work with this firm as a machinist, and also engaged board at the Berwick House, where I boarded until my arrest. I had been in Rutland a little over five weeks when I was introduced to Mrs. Freeze by a prominent and well-to-do man of that town, who I afterwards learned to have been her common patron and secret agent. This man had a wife at the time, as also did the larger number of her Rutland associates, whose names were made known to me by hearing them called in her conversation. A week later than this, and I think on the evening of May 20, I, in company with another young man, visited the woman's house, where we spent the early part of the evening. I next saw her in the afternoon of June 4, when in company with her, I rode to Castleton in a carriage. On the evening of June 6 I accompanied her to Barnum's circus, which exhibited in Rutland on that evening, and afterward went home with her. This was the last time I ever saw the woman, either in her life or death.

“On the occasion of our journey to Castleton, she voluntarily gave me a history of her past life, and cheerfully talked about her future hopes and expectations. She said that she was respectably connected, and had once been the lawful wife of a man bearing her name, who was a stonecutter by trade, and had been dead about six years. That shortly after her husband's death she had formed the acquaintance of one John Sternes, who was at one time a tax-collector in Rutland, and then a resident of some Western city. That this man promised to, and did, support her in good style until he was obliged to leave Rutland hastily for some act of dishonesty or other. That her house was built and paid for by him, and that he had a wife and family living at Rutland at the time of their connection. She continued by saying that after his having left the place he had failed to further fulfil his agreement with her, and, consequently, she at once organized what she called a Young Ladies' Social Club. She engaged two girls under disguise of boarders, and retained them until compelled to discharge them through fear of violence from her relatives, who had strongly opposed her course. That since then she had lived mostly alone, receiving patronage from no small number of married business men of

Rutland. In speaking of these men, she seemed pleased in boasting of her power over them, and the trouble she could make between them and their unsuspecting wives, by an exposure of their intimacy with her. That the wives of these men had often passed her on the street with a look of perfect contempt, little suspecting the fact that many a time their husbands had been closely housed with her when they supposed them to have been miles away from home on business. Some of these men felt very bitter towards me when they found that I had also been in the woman's company. But they should have remembered that the woman and myself were both single persons, and that however morally wrong our associations may have been, they were not criminal, and theirs were. Mrs. Freeze spoke of a severe sickness she had experienced during the winter that had just past, and of the debts she had accumulated in consequence. That she was being closely pressed for the payment of several small bills and hadn't the money to pay them. She mentioned a coal bill in particular which she had promised to settle the following day, and did not see how she was to do it without borrowing the money. I then lent her the money to pay it, with the understanding that she was to return it as soon as convenient, but, as her death occurred in one week from that day, I lost it all.

“On arriving home from Castleton, in the evening, Mrs. Freeze was hailed from a neighboring house, and told that a box had been left in their care for her until her return. This box proved to be a case of choice liquors that had been sent her by a wealthy citizen of Rutland, whose dealings with the woman are above suspicion. On opening her front door she discovered a written document lying upon the floor, that had evidently been shoved under the door while she was away. This she hastily snatched up, and requested me to read its contents to her. I did so, and was more than amazed at her confessing her inability to either read or write a single work. After taking leave of the woman on this occasion, I saw her but once more in her life, and that was on the evening of June 6th, when we attended the circus together. This evening I called at her house, about 7 o'clock, in fulfilment of a promise she had extorted from me a week earlier. On entering the house I found her in company with three strange men, who she introduced to me as her friends from Bellows Falls. After returning from the circus, we had been in her house but a very few minutes, when three more men called and were admitted. These being disposed of, their places were soon filled by the admission of two more men, making in all a number of nine men who had called on her inside of five hours, three of which were passed in the circus at that. When the last two men entered the house, I called for my hat, bade the woman good-night, and left her house fully satisfied that it was a much frequented resort. During my short acquaintance with the woman there was never one unpleasant word exchanged between us; and when I was accused of her death some of her neighbors testified to her having always spoken of me to them as her friend. Mrs. Freeze was a small, spare woman, between thirty and forty years of age, and would not have exceeded

100 pounds in weight. She was of pleasing address, very talkative, and would sometimes use oaths that would make one's hair stand on its end. She drank frequently, and was unquestionably a woman of very easy virtue. But, notwithstanding all her faults, I believe her to have been a kind and generous-hearted woman, and a person wholly incapable of provoking any sane being to the enormous crime of taking her life.

"My unfortunate trip East occurred on the same day the woman is supposed to have been murdered. Her house was discovered to be on fire between 6.30 and 7 o'clock on that morning, and I proved on my trial that I left Rutland on the 4.30 morning train for Providence, R.I. Now, according to the R. & B. Railroad time-table, and the regular running of the trains on that road, I was in Bellows Falls at the time her house was on fire, and could not possibly have had anything to do with the crime. I reached Boston about 2.15 P.M., and immediately upon the arrival of the train, and in company with Mr. and Mrs. George Stewart, of Rutland, took a hack and crossed that part of the city which leads direct from the Fitchburg depot to the Boston & Providence depot. At the latter depot I took the first train going to Providence, which left Boston at 5 o'clock P.M., and arrived in the former place about 6 o'clock, P.M., my business to Providence being if possible to secure employment with the American Screw Company or the Corliss Engine Works, both of which are well-known firms at that place. After consulting a few workmen who were in the employ of both these firms, as to my probable chance of getting a suitable job, I was discouraged by being told that these companies were then discharging some of their best and oldest experienced workmen. These men being members of the Workingmen's Union, of which I was also a member, I knew if I couldn't get work through their aid it would be useless for me to apply at the company's office. I remained in Providence over night, and having no more than enough money to secure a respectable lodging for the night and to pay my fare home, I did not stop at a regular hotel, but at an ordinary lodging-house, where a room and bed only was to be had by paying seventy-five cents for the same before retiring for the night. I was not asked to register my name at this house, and in fact don't think there was a register in the house, but was simply assigned a good bed, where I slept well until morning. My supper and breakfast were taken at a restaurant near by the lodging-house, at the cost of forty cents per meal, making the whole cost of my meals and lodging a dollar and fifty-five cents. Had I stopped at a first-class hotel, my name would have been written upon its register and enabled me to prove an alibi that would have upset all this misrepresentation and wrong. For it was claimed that Mrs. Freeze's jewels were sold in Boston at the time I was in Providence; and as those Jews had sworn a false identity on me I was obliged to prove that I stopped in Providence on that night as I had stated. Now, this was a hard thing for me to do, as the following facts will show. In the first place, I never saw any but strange faces from the moment I separated from Mr. and Mrs. Stewart, at the Boston & Providence depot, until my return to

Fitchburg on the following day. Secondly, I did not take a single number of any house or place I had entered while in Providence. Third, Providence has a population of nearly 100,000 inhabitants, and is a city I had never been in before. Fourth, while on my journey I had never dreamed that such an accusation awaited my return home, for God above all others knows that my trip had been contemplated at least one month before it was taken, and that no dishonesty attended it. Fifth, and last, when arrested and accused of the unfortunate woman's death, I had only my wearing apparel in general and five dollars in money to my name. Had I then the one-sixth part of the money expended by the prosecution in effecting my foul conviction, I haven't a doubt but what I would have cleared myself as honorably as ever man was acquitted in any court of justice on earth. This I did not have, and consequently was obliged to submit to the gross injustice I knew was being done me.

As I have said before, my journey to the city of Providence was made on the 9th day of June, and after stopping over night, I started for home on the 10th, arriving at Boston at 12 o'clock, M., where I was obliged to wait until 5 P.M., for the first train for Vermont. My time between trains at this place was occupied in visiting the Charlestown Navy Yard, its machine-shops, ships of war, and so forth, all of which were of great interest to me, because of my being a machinist by trade, and also having served in the United States navy during the rebellion. I left Charlestown Railroad Station for Rutland at 5 o'clock in the evening. At Fitchburg I met a young man from Rutland, who was also returning home on the same train with me. This man first informed me of Mrs. Freeze's death by reading an account of the same from the *Boston Journal*. At Cuttingsville, a station ten or twelve miles south of Rutland, the train on which I was returning was boarded by two officers from Rutland, who arrested and searched my person in the car. The search was very closely made, but resulted in finding nothing but my railway ticket and \$5.65 in money. A handcuff was then placed on my right wrist, and on the arrival of the train at Rutland, I was taken to jail and locked up for examination. My photograph was then taken to Boston by these reward-seekers, and shown to the Jew pawnbrokers before they had ever seen or tried to identify me. My picture was taken in a light-colored, summer business suit, and when these men were brought to identify, I was not allowed to appear before them in any other suit of clothes than the same in which my photograph was taken. The only public identity made took place in the Town Hall at Rutland, about a week after my arrest, and was conducted in the following manner: The three so-called witnesses, who had been brought from Boston, were taken to the hall where nearly three hundred people had congregated to witness the identity. These men were then seated on a side seat at the left-hand entrance to the hall. I was then compelled to walk from the jail, through the streets, to the hall, handcuffed, and between two officers. A large crowd followed in the rear until we reached the hall-door, where, in the presence of the so-called witnesses, the

cuffs were taken from my hands, and I requested to take a seat between five men, all of whom had on dark clothes, and were at least ten years older than myself. I was seated in the centre of these five men, and at my back stood one of the officers who had brought me from the jail. This dunce stood there until the pretended wrath of the reward-seekers was raised to such a pitch that he was seized by the arm and dragged away by them. The Boston men were then, one by one, led past us by a justice of the peace, and asked to point out the man they claimed to have seen in Boston. Each one of them pointed to me, but not as the man they may have seen in Boston, but rather the man whose photograph was shown them in that city.

“This pretended identity was a complete sham, and every fair-minded person who witnessed it on that day knows it to have been both a farce and an injustice. But this was a very mild transaction when compared with the ridiculous attempts, or rather pretensions, at identity which took place at the jail under the sole direction of the two scheming reward-seekers and so-called detectives, who have won popular praise for the villanous work they have done under the disguise of law. It has always appeared to me that had these men been honest they would have brought these Jews to Rutland without first having shown them my picture and talked over the crime with which I was accused. I was in safe custody at the time and could see nothing that warranted their carrying my picture about the country and exhibiting it to such as they were able to induce to swear to anything they might ask of them. One of these so-called detectives was better acquainted with Mrs. Freeze than any other man in Rutland, and employed three noted bad women, who were not strangers to the unfortunate woman, to appear against me on my trial. Another witness produced by him was an ex-convict from Boston. Still another of the prosecution's witnesses now languishes under a four years' sentence in this State Prison for the crime of adultery. So much is known of these witnesses, and time will undoubtedly prove the character of the rest. In connection with these witnesses I also desire to call attention to the fact that the prosecution claimed my conviction wholly on the testimony of the Boston Jews. In his charge to the jury, Judge Wheeler said that the finding of Mrs. Freeze's property in Boston, and in my possession, as these Jews had testified to, and unexplained by me, was sufficient to convict. This was asking an explanation not in my power to offer, for the means by which her things reached Boston was as foreign to me as was the means by which she came to her death. Now, every intelligent person must know that a Jew does not recognize an oath administered in our Christian form as being sacred, or even binding. The only form and oath they regard as sacred is that which is administered to them by a rabbi; and in this case the oath was administered to them in our regularly established form. The question arising from this fact is simply this: Is it right to admit in a case where a person's life depends upon the actual truth, the evidence of men who have never regarded our Christian form of oath as being in any way binding on their conscience before either God

or man? "Our State laws declare that every person accused of a capital crime shall have a fair and impartial trial." "It also declares that the accused is entitled to and shall have the full benefit of all doubt as to guilt." This I understand as meaning a fair chance for the liberty and life of the accused. I asked no more than this, and that it was not granted me every fair-minded man who reads the following solemn facts will readily see.

"Be it understood that Mrs. Freeze's house was located in the outskirts of the village of Rutland, or at the extreme end of Forest street. The distance between her house and the Berwick House, where I boarded, lacks a trifle of being a full mile. Now, then, on my trial I proved, by the best witnesses that can be found in the State, that on the morning of June 9, which is the same morning on which this woman is supposed to have been murdered, I came out of the Berwick House at precisely 3.45 o'clock, and in company with another man walked to the depot, where I ate breakfast at the restaurant with the conductor of the train on which I left Rutland for Providence at 4.30 sharp. I offered undisputed proof of this, and was backed by the conductor, baggage-master, and a brakeman of the train. I could have produced any amount of proof on this point, had more been necessary. Now, on that morning this woman's house was discovered to be on fire at between 6.30 and 7 o'clock, which was the very hour at which I was in Bellows Falls, a distance of between forty and fifty miles from Rutland, and the scene of the fire. This the prosecution admitted as a fact. It was further shown on the trial that the woman's house was built on the light balloon-frame plan, and that the fire had originated in her bedroom upstairs, which was located in close proximity to the roof. There was no fire in the lower part of the house when the roof was discovered to be on fire, and the fire upstairs seemed to be wholly confined to her sleeping apartment. The floor of this room was heavily carpeted, and the room well furnished with light, combustible furniture, all of which could not fail of burning as rapidly as the fire reached it. Now, if Mrs. Freeze was really murdered, as it is claimed she was, I believe that the party who burned her house was the same who murdered her; and as I am foully branded with the vile crime, I, in the name of reason and justice, ask how it were possible that I could have been the perpetrator of this dastardly crime when I was so many miles away from where it occurred at the time? I repeat, how could it be possible? Just think of it! By the very best of proof I have proved my whereabouts three and a quarter long hours before her house was discovered to have been on fire. And had I been the author of the deed, three-quarters of an hour more must necessarily be added to the above time to have allowed me to reach my boarding place before a quarter to four o'clock, which time the proof of my whereabouts commenced. This, it will be seen, would have set the hour of firing her house at 3 o'clock, if it had been done by me. Now, does any sane man believe that it would take four hours for a fire to burn through an ordinary wood roof house? Or does any one think that it would even take one hour? Everybody knows that a four hours' fire has often consumed almost an

entire street of buildings, and, if it will do that, what would be left of a small cottage house in one-quarter of that time? One more fact in connection with the above, and then I am done with this part. And that is, it will readily be seen that if I had been the perpetrator of this enormous crime it would have been an impossibility for me to have made my way through the largely populated streets of Rutland to my boarding-place without being met or seen by some one or another. It is broad daylight in the month of June at that hour in the morning, and a time when many people are stirring about, especially those citizens of the place who are more or less connected with railroads and hotels.

“ I have said that death has no terror for me, which is true ; but at the same time I would have no one understand that this in any way alleviates the painful thought of being forced to suffer an ignominious and premature death, as an atonement for the death of a human being whom God knows I had never harmed. All the unpleasantness arising from confinement of body during the long and weary months that have past, sinks into utter nothingness when compared with the constant thought of the terrible slander and falsehoods which were published in the newspapers before my case ever reached a lawful tribunal. It seemed to me, as it must have appeared to every one who knows me personally, that I was tried and pronounced guilty by the public press before the course of the law could be brought to bear on the case. Now, I did not think this fair, nor even right, for every person accused of any offence against the law is supposed to be *innocent* until proved *guilty* in a court of justice. At least the law so declares. To show the advantage taken of my unpleasant condition as an accused, I deem it my duty to herewith append the heading of three articles, published in the Rutland papers shortly after my arrest, which were in substance as follows : A gentleman from Troy, N.Y., visited the jail Sunday morning, where he saw and recognized John P. Phair, who is under arrest for the murder of Anna E. Freeze, of Rutland, as being the man who, a year ago, murdered a woman and two children in Troy, N.Y., and afterwards threw them into the canal in that place. He was arrested, tried for the crime, and acquitted on the ground of there being no proof to sustain the charge. It is said that this J. P. Phair, who has so recently become notorious as the murderer of Anna E. Freeze, once attempted to decoy the cashier of the Vergennes bank out on a certain evening with a large sum of money, for the purpose of waylaying and robbing him of the same, etc. This J. P. Phair is supposed to have been the person who, some years ago, shot at one H. C. Thompson, of Vergennes, one night as he was returning home from his place of business ; motive, to kill and rob him of his money, etc. Now, the solemn truth is, these were the most malicious and wicked falsehoods that human tongue could utter concerning me, and I defy the world to prove any one of them true, or that I was ever arrested on such a charge. It was undoubtedly the work of the reward-seekers, and in my mind it bore but one unmistakable meaning on the face of it ; and that was, to so inflame the public mind against me that an impartial trial could not be had. Previous

to these publications, there was also published a full account of the terrible means by which the unfortunate woman is supposed to have come by her death, and to which was attached a wood-cut photograph of the deceased and one of my own, representing me as her alleged murderer. There was not a single false statement made by the press about me that was ever after retracted by their authors, nor did I arraign them for their infamous work. I believed then, as I do now, that they themselves will eventually reap the fruits of the wrong intended for me.

“The fact that I had ten years previous to this been sent to prison for the offence I have described in the opening of my statement, was also published, with comments purporting that this fact alone showed that I was a person likely to commit the vile crime of which I am accused. In a word, every conceivable unfair means were resorted to by these so-called detectives and reward-seekers for the purpose of degrading my character in the estimation of the people and in misrepresenting me in the sight of the law. This malicious and strange work was all done before I had even a hearing before a court of justice, and while I was confined at Rutland in a brutal, solitary dungeon, in which a single ray of daylight had never penetrated during my confinement therein. The only light I had during the seven months I was forced to remain in this place was an ordinary oil lamp, used both day and night until my eyesight was so nearly ruined that I am obliged to use glasses while writing these lines. There were no means of ventilation in the dungeon save through an ordinary-sized iron-door, which was perforated with numerous three-inch square holes. I was allowed no exercise whatever outside of this den, which was so small that the healthiest person living could not pace it ten minutes without creating a severe headache. Every stranger who approached the door of the dungeon during my close imprisonment there, was cautioned by the reward-seekers to be careful, as it contained a great and desperate criminal. The object sought by this kind of representation must be so apparent to every person who has known me from my childhood up, that it is hardly necessary for me to add that it was as ridiculous as it was malicious. It is all these things which in part constitute the meaning of that part of my statement where I have said that my counsel defended me to the best of their ability, under circumstances wholly unfavorable and discouraging. So much has been said about my being a desperate character, that I cannot feel justified in losing this opportunity of asking my adversaries on what ground they have advanced this infamous claim. Is there a single person to be found in any community in which I have moved during my life, who can come forward and truthfully say that I have ever laid a violent hand on a man, woman, or child, during my whole life? Is there a school-mate who can say I have ever abused or quarrelled with him? Is there one who ever knew me to be a drinking character? Or is there one who can say he ever saw me in any street or other rowdyism? If there be a single person who can truthfully give any but a negative answer to the above questions, then I don't know where he can be found. I have never fought any man in my

life except the common enemy of our country during the late rebellion. And for a record of my conduct and loyalty to the cause, while serving in the navy at that time, I proudly refer to the brave and gallant officers under whom I served, and to the fact that I came forth from the contest without a scar on my body.

“As to the conduct of my earlier life, I admit with much shame that it was not in some respects as it should have been. But after having paid the full penalty which the law inflicts upon such dishonesty, I thought it very uncharitable in my accusers to bring up the settled past for capital on which to brand me as a bad character. A misstep in the past is beyond mortal power to wholly recover; and it often looms up as a monster before its victim at times in his life when he would give his all if it had never been taken. It was in this unhappy condition, the truth of my having taken such a damaging past misstep, found me when accused of taking a human life. It was also in this dreadful fact all my fears of a partial judgment were centred, and I feel that they were fully realized. Never in all my life did I so fully understand the meaning and necessity of a pure and spotless character, as I did when on trial for my life. I then saw its true value and my reckless mistake in not having cultivated that which is certainly the most priceless jewel that can be possessed by any young man whose personal character may be assailed. My conduct in associating with Mrs. Freeze previous to her death did not add anything favorable to my character, in a moral sense, and I saw it only when it was too late to prevent the unsuspecting public exposure of our acquaintance which followed her mysterious death. Had I even dreamed that so serious and sudden change was to take place in the woman's life, I am sure nothing on earth could ever have induced me to enter her house. But, as it was, I suspected nothing unusual, and went out in public with her freely to my shame and great sorrow. Sorrow, did I say? Ah! that were but a faint expression of the real torture which I feel for having run the risk I did in associating with the woman whom I ought to have felt far above. But, notwithstanding all this, I have never been without the full consciousness of knowing that the unfortunate woman was never the recipient of anything but kindness from my hands during our acquaintance. And it is this comforting conscience which has been my strength and support from the first, and cannot fail to sustain and comfort me to the last. Had I been in any way guilty of the woman's death, my duty to my God and fellow-men would have been perfectly plain, and my plea entered in accordance with the truth. There would have been no mystery enshrouding the crime, for I should then have known the end from the beginning, and that my only hope of God's forgiveness and pity by the people lay in a full confession, which no earthly temptation could have induced me to withhold. When in my innocence and standing up for my rights as a citizen and man, which no act of mine had forfeited, I was said by the uncharitable to have been of a stern and stubborn disposition, and would probably walk to the gallows carrying with me the secrets of the dead. Now, the author of this little sensational speech is well known to me, and I am sure that

his personal knowledge of me and my disposition never with truth justified him in making such a remark. He had something to say, and, it probably being easier for him to speak evil than good, he did so, and sent his little speech away to Boston to be printed in the *Journal*. I wish to ask this, and all such persons, what other course there is left for the falsely accused to pursue than that of manfully standing up for the rights which he knows are being wrongfully wrenched from him?

“As to the matter of my execution, it is impossible for me to say that it will not take place at the appointed time. Were I guilty I would pray that it might, for it would be greatly preferable to a life of imprisonment. But innocent as I am I will never encourage such a disposition of my life, but rather will I leave the responsibility in either event with those who have taken it upon themselves. If my life is prolonged I hope the Almighty will speedily establish my innocence and thereby enable me to achieve, through my great misfortune, one of the grandest triumphs over human injustice that could possibly come to a wronged being in this world. In the event of my execution there will be nothing said by me that is not herein stated, and any report to the contrary will be utterly false. Many will probably ask why I had neglected petitioning the recent Legislative Assembly for a reprieve. My answer is simply because I was too poor to employ a proper person to present my condition before the honorable body. I am now in my twenty-ninth year of age, have a most excellent, but aged and widowed mother and three affectionate sisters, who are loved and respected by all who know them. Their feelings concerning my unfortunate condition can, perhaps, be better imagined than I can describe them. What I have said about my enemies I have said with all the charity a wronged man can bestow upon those whom he has every reason to think have sought his life through malignity, and for the gain of a few paltry dollars. I trust that I have been gentlemanly and kind to everybody during my affliction, and that my misfortune has thus far been borne with Christian fortitude and resignation to the divine will of Him in whom I trust. *And to Almighty God, the maker of heaven and earth, to him who knoweth the secrets of all hearts, do I now most solemnly appeal, in this the hour of my extremity to hear me, and bear witness to the truth, that I am innocent of the crime for which I stand convicted. And as I am innocent or guilty, so may he deal with my soul in the day of judgment and in eternity.*

JOHN P. PHAIR.”

The outcome of the publication was a scene of exciting and dramatic interest. At about eleven o'clock Friday, the attention of one M. D. Downing, a business man of Boston, was called to the matter by a messenger in his office, who said the *Globe* had out a flaming bulletin, and said that Vermont was going to hang an innocent man that day. As Downing originally came from Vermont he sent for a paper, and amid the few remnants of his business which the rain and the hard times had left him, began at the beginning and read the statement carefully until he reached the

description of the trip to Providence, and he then sat spell-bound in his chair. He remembered distinctly that about the time alluded to by Phair he had been to Providence, and returning to Boston on the noon train he sat with a man nearly throughout the whole journey, who said that he was a mechanic; that he came from Rutland, Vermont, and had been to Providence to get work from a screw company there, but as he was unsuccessful he was returning to Rutland again. Mr. Downing referred to a memorandum book of that year, which he had kept, and found that the date of his trip to Providence was June 10, 1874. Thinking it extremely improbable that two men had come from such a distant and small city as Rutland on the same day, had gone to the same place on the same errand, and had returned by the same train, he concluded that Phair was in all probability the man. But what should he do? It was then high noon, and in less than two hours Phair would be hung. He rushed to the office of the Chief of Police and besought his advice, and he was told that he had better telegraph the Governor of Vermont immediately. He then consulted the manager of the *Globe*, and he concurred in the advice of the Chief of Police. Both men rushed down State street to the office of the Western Union Telegraph Company, and the following telegrams were immediately written:—

Boston, April 6, 1877.

*To Governor Fairbanks, Montpelier, Vt. :—*

I think I saw and conversed with the man who is to be executed to-day, on the train coming from Providence to Boston, June 10th, 1874. I send by advice of Chief of Police.

M. D. DOWNING,  
50 School street, Boston.

*To Governor Fairbanks, Montpelier, Vt. :—*

Mr. Downing's story about Phair seems to be worthy of delay for investigation.

CHARLES H. TAYLOR,  
Manager of the "Globe."

The Superintendent of the telegraph office took a deep interest in the matter, and attempted to despatch the telegrams immediately, but it was found that the Montpelier operator was at dinner. Then all the offices of the Western Union Company in Vermont were signalled to ascertain, if possible, where the governor was. No word came from the governor, and at one o'clock the following telegram was sent:—

*To the Sheriff at Prison, Windsor, Vt. :—*

A reliable man here states, after reading Phair's statement, that he is pretty certain he met Phair on train from Providence to Boston, June 10, 1874, and thinks he can identify him. The man he met was a large man; said he was from Rutland, and had applied to screw company at Providence for work. Had you not better communicate with governor before hanging?

CHARLES H. TAYLOR.  
Manager of the "Globe."

Finally, about 1.15 o'clock, word was received that the gover-

nor was in the telegraph office at St. Johnsbury, Vermont, and had received the despatches. Meantime the preparations for Phair's execution at Windsor were being perfected. The convict had given up all hope. His last appeal for executive clemency had been heard and denied. Crowds of people gathered about the prison seeking admission. Those whose duty it was to witness the sad spectacle gained an entrance. The solemn thud of the hammer, in the construction of the gallows, had ceased. The condemned man, arrayed in black for the scaffold, was attended by his spiritual advisers and a few faithful friends, who administered to him such consolation and support as were in their power. All hope had been abandoned. The execution was appointed to take place between one and four, P.M., and the hands of the clock had already trespassed upon the first fatal limit of the time within which the tableau of death was to occur. The few spectators, some of whom had come from a morbid curiosity, some from duty, and some to witness the death which their oaths had contributed to bring about, awaited, with pale faces, the appearance of the doomed man and the beginning of the sad rites. The sheriff had arranged to spring the trap of death at precisely two. One thirty-six came, and the hangman with it, but, miraculously to the convict, brought life instead of death. He handed a telegram to a by-stander, which proved to be from the governor, respiting the condemned man. The reprieve was as follows:—

## TELEGRAPHIC REPRIEVE.

St. JOHNsbury, Vt., April 6, 1877.

To S. W. Stimson, Sheriff of Windsor Co., Windsor, Vermont:—

Delay execution of John P. Phair until Friday, May 4, next. Written reprieve till that day will be sent by mail.

Signed,

HORACE FAIRBANKS,  
Governor.

## WRITTEN REPRIEVE.

EXECUTIVE CHAMBER,  
St. JOHNsbury, Vt., April 6, 1877. }

S. W. Stimson, Sheriff of Windsor County:—

You are hereby directed to postpone the execution of John P. Phair until the fourth day of May next, between the hours of ten (10) o'clock, A.M., and two (2) P.M., at which time you will execute the warrant issued to you by the Supreme Court.

HORACE FAIRBANKS,  
Governor.

The scene that ensued was beyond all description, and can never be forgotten by those who witnessed it. The man himself, who had previously borne up unflinchingly, fainted dead away. Almost universal joy was expressed among those present. One man, indeed, who had been chiefly instrumental in securing Phair's conviction and received a large reward therefor, on learning that the governor had sent a reprieve, exclaimed, between clenched teeth and white lips, "God d—n him!" and he was summarily ejected from the prison, to the great delight of all present.

It was impossible to present the alleged new evidence to the

Court, as the statute provided that no new trial should be granted on the ground of newly discovered evidence, unless the application should be made within two years after final judgment. More than two years had elapsed after Phair was sentenced. The only relief, therefore, was to secure a reprieve until after the next session of the Legislature which occurred in October, 1878, and if an amendment of the law relating to new trials was granted the evidence might then be presented to the Court. A diligent effort and close investigation were made by Phair's few friends, many petitions were circulated and signed praying for an extension of time to the convict, and as a result Governor Fairbanks granted a second reprieve, as follows:—

FINAL REPRIEVE.

EXECUTIVE CHAMBER.  
ST. JOHNSBURY, Vt., May 2, 1877. }

*S. W. Stimson, Sheriff of Windsor County:—*

By the authority vested in me as Governor of the State of Vermont, you are hereby commanded to delay the execution of the sentence of death upon John P. Phair, now in State Prison at Windsor, until the first Friday of April, A.D. 1879, between the same hours of the day in the warrant which you now hold for your execution.

HORACE FAIRBANKS,  
*Governor.*

### CHAPTER III.

#### THE LEGISLATIVE PROCEEDINGS.—THE PETITION FOR A NEW TRIAL.

An application was made by Phair's friends to the session of the Vermont Legislature of 1878 for some law that would either grant Phair a new trial outright, or would confer upon the Supreme Court jurisdiction over his case. The application was based upon many petitions of citizens numerously signed, among them a petition signed by John G. Whittier and 660 others, and upon reference to the subject by the message of the governor, a hearing was given on the 24th of October by the Joint Judiciary Committee, over which Hon. Henry C. Belden presided by virtue of his position as chairman of the Senate Committee. The petitioners were represented by Col. W. G. Veazey, Charles B. Eddy, and Samuel W. McCall, and the State by ex-Gov. Stewart and Martin G. Evarts.

Mr. McCall opened the case for the respondent, detailing the object of the application and then made an elaborate review of the newly-discovered evidence. As a review of the new evidence will be given in the arguments upon the petition for a new trial, it is unnecessary to publish this argument. Ex-Gov. Stewart replied for the State, followed by Mr. Evarts and Mr. Eddy for the petitioners. It was finally agreed that a general law be reported applicable to the case. The law, that was finally passed, provided that the application be made to two judges, after the statutory limit of two years had passed, and these judges if they deemed the

evidence important could order the petition to be filed and referred to the Supreme Court, full Bench, and could issue a stay if execution was impending. As the case attracted to a great degree the attention of the Legislature from its extraordinary nature, and because more than 20,000 petitioners had prayed the Assembly for some relief, and as the convict was and had been entirely without means to prepare his defence, a bill was introduced into the Senate to place in the hands of Phair's Vermont counsel a sum, not more than \$200, to assist in preparing his case. Mr. Carrigan appeared before the Joint Committee on Claims and advocated the measure. The Committee reported it unanimously to each branch, and it passed the Senate without a dissenting vote. When it came into the House, however, although it was advocated by Judge Poland, it was defeated by a decisive vote mainly through the opposition of N. T. Sprague, of Brandon, an influential member, and because many members were personally adverse to any relief, in any form, being accorded the convict, particularly the members from Rutland and Addison Counties.

A petition for a new trial in pursuance of the new law was presented by Phair's counsel, Col. W. G. Veazey, Charles B. Eddy, and Samuel W. McCall to Judges Royce and Redfield, at Montpelier, Jan. 17, 1879. After a short hearing the Court decided that the petitioner should be permitted to go to the full bench. Royce, J., said they did not pronounce upon the sufficiency of the evidence, but there was sufficient evidence to warrant its presentation to the full bench. The petition was made returnable to the January term of the Rutland County Supreme Court, and the case came up for hearing on Monday, Feb. 4, and occupied the attention of the Court two days. There were present, *Ch. J. Pierpont*, Judges *Barrett*, *Royce*, and *Powers*, ex-Gov. *John C. Stewart*, Hon. *E. J. Ormsbee*, and State's Attorney *Lawrence for the State*, and Col. *W. G. Veazey*, Hon. *C. B. Eddy*, *Samuel W. McCall*, and *D. E. Nicholson* for petitioners. The evidence at the trial, and on the first petition for a new trial, was read.

#### EVIDENCE PRESENTED ON FIRST PETITION FOR A NEW TRIAL.

JOSEPH WHITE. — Reside in Rutland; am a machinist; knew John P. Phair well in 1874; attended Barnum's circus at Brandon, June 8, 1874; saw John P. Phair in Brandon three times that day; the first time I saw him he was standing on the sidewalk, within twenty feet of me; I was in a buggy riding by; saw him again as I was driving near the stone bridge near the Scale Factory; Phair was crossing the street; called the attention of the young lady I was with to him; last time I saw him was after tea time; the train for Rutland left while I was at supper; drove back with my team to Rutland; went to my room at Berwick House little after one o'clock in the morning; Phair's room was opposite mine in a wing; I saw a light in his room that morning; saw a person in the room; thought Phair had returned to Rutland from the circus; thought it was

Phair in his room; think so now; told Oliver J. Cain a few days after the circus that I saw Phair in Brandon at the circus, Monday, June 8, 1874.

CHARLES LEAVITT. — Reside in Rutland; knew Mrs. Freeze for about two years and six months; boarded on same street she lived on; saw Mrs. Freeze in Root's grocery many times; saw Mrs. Freeze the evening of June 8, 1874, about eleven o'clock, in a hack with a man driving toward her house; the hack drove by me near a gaslight at the crossing; could see her plainly; the man was not John P. Phair; he was not known to me; he had on straw hat with a black band; the hack drove, I think, to Mrs. Freeze's house; used to live in East Cambridge, and worked for Mr. Cailiff; knew his son Arlich Cailiff; he was a dissipated man; Arlich Cailiff had served a term of years in the Massachusetts State Prison; this same Arlich Cailiff swore against Phair at the trial; he swore under the name Isaac Smith; Arlich Cailiff saw me on the street and asked me not to expose him; I told Mr. Walch about him but he did not tell Phair's counsel in time for the trial.

SAMUEL S. BOND. — Reside in Rutland, and was there June, 1874; was with Charles A. Leavitt the evening of June 8, 1874; saw Mrs. Freeze that evening in a hack riding with a strange man; knew John P. Phair; the man with Mrs. Freeze was not John P. Phair; knew Mrs. Freeze by sight; had seen her many times; boarded on the same street she lived on.

MARSHALL D. DOWNING. (*Examined by COL. VEAZEY*). — My age is 32; business, jobbing and manufacturing patent novelties, etc.; place of business, No. 52 School street, Boston; reside at No. 4 Kendall street, Boston; first came here in 1863; then enlisted in United States service, and since return have lived in Boston most of the time; been in business for myself for three years; previous to that worked for others in furniture business; have worked for Daniels, Kendall, & Co., Braham, Shaw, & Co., in same block, and Haley, Morse, & Boyden; was born in East Brookfield, Vermont; lived in Williamstown and Montpelier; enlisted in June, 1862, in Company I, 11th Regiment; went to Providence morning of June 10, 1874, and returned in the forenoon of same day to Boston; on entering train for Boston at Providence went into smoking-car; smoked a short time; then went into passenger car, and sat by side of a gentleman unknown to me; entered into conversation with the man, of which I do not remember all; but I remember he said he had been to Providence to get work of the American Screw Co.; he said he hailed from Rutland, Vermont; I told him I was a Vermonter, and think I told him what part of the State I came from; he said he did not get work, and was going back to Rutland to follow his trade as a machinist; I then made my business known, and told him I was about to employ agents to sell goods for me, and that I should like a good agent in Rutland; he did not seem disposed to take an agency if he could find business at his own trade; I remember of asking him how large a place Rutland was; and we talked about the quarries in Rutland and Roxbury, Vermont; this is all the conversation I can distinctly remember; the rest was of a general

nature; I am quite positive names were not given; do not know exact time we left Providence, but think it was between 10 and 11 o'clock in the forenoon, and we arrived at Boston about noon, for I went to my house to dinner; I do not know as I ever saw that man before or since; he was rather a thick-set man, with frank, open countenance; a good man to talk with; had on a light suit; cannot say about his pants, or about his height, for I do not remember seeing him standing up; he was of a somewhat dark complexion, and apparently between twenty-five and thirty years old; at that time I was not accustomed to travelling much; had not been out of town more than two or three times that spring; remember the date, because it was the first day that I opened my office, and by a memorandum that I made of the trip, according to my custom; my attention was first called to this matter by reading Phair's statement in the *Boston Globe*.

A young man who is in my office came in at nearly eleven o'clock on that morning, and said that the "Globe" had come out with a flaming bulletin, saying, "Is Vermont to hang an innocent man to-day?" I sent out for a paper, and read the statement; the two clauses in the statement that especially attracted my attention were, that he went to Providence to obtain work of the American Screw Company, and that he came from Rutland, Vermont; I remembered having a conversation with a man on train from Providence to Boston about that time. I referred to my books and found that I returned on that very day. It occurred to me that the coincidence was a strange one, and I first went to Chief of Police Savage, and told him about the matter. Never had any communication with Phair; never had any conversation about the murder of Anna Freeze; never had any conversation or communication with one Carrigan who obtained Phair's statement for publication; never read trial of Phair, or any particulars; saw a likeness at City Hall, April 6, 1877, said to be of Phair. It was handed me by Col. Taylor; think he asked me if I ever saw that likeness before, or if that looked like the man I saw; he did not know whose picture it was when it was handed to me. I saw no mark on the picture, or name; had no means of knowing whose picture it was. I made the remark to Mr. Taylor that that looked like the man whom I met; thought it was the same man; thought it was a good likeness of the man I met; according to my best recollection that's what I would say. Detective Ham and Col. Taylor were present when I saw the likeness; several others were in the room. Don't remember that man I met said when he left Rutland, but I think he used these words: "I went down to Providence yesterday;" I know of no scheme to prove Phair innocent. In answer to further interrogatories by E. J. Ormsbee, witness stated, "Have read 'Boston Herald' and 'Globe.' Have been besieged by persons questioning me about what Phair claimed about the question. Have conversed with none except Col. Taylor and Mr. Carrigan, and but little with Carrigan."

Think I have told all details and circumstances connected with the meeting of this man. Examination continued the following day. Had two purposes of going to Providence; went to see a

man about a patent, also to get the goods to sell; went also to see if my goods had been sold in Providence; had samples of goods with me at the time; went into several places of business; the person I went to see was a Mr. Harding; went from Boston on the morning train, and came back, leaving Providence, I think, between 10 and 11 in the forenoon; I know that I then thought the train arrived about noon; have travelled considerable; did not travel much in the summer of 1874.

**MIL0 C. PERRY.**—Reside in Elizabethtown, New York; in June, 1874, visited John P. Phair in Rutland jail; W. G. Veazey, counsel, was with me; Phair gave an account of his whereabouts during Providence trip; asked Phair the following question: "Can you not recall to mind some person you saw on that Providence trip until you got back to Boston?" Phair said that he could not remember of seeing anybody he knew; said he met and conversed with a man on the Providence train for Boston; the man sat in the same seat with him; the man said he was from Vermont, where he had lived for some years; Phair stated that no names were exchanged, although conversed quite freely for some distance.

**Col. W. G. VEAZEY.**—Live in Rutland; was counsel for John P. Phair; have had several interviews with Phair; gave me substantially the same account as published in his statement; urged Phair to have his case investigated; said he had no means; went to Providence and searched for lodging-house and restaurant described by Phair; never had been in Providence before; was not able to find the buildings described by Phair; had no time to rightly prepare case; was appointed by the Court, with Judge Dunton, to defend Phair; had no time or means to secure detective or other investigation of his statement; Phair explained to the Court that he was destitute of means to prepare his case; Judge Dunton, during the trial, was taken sick; Hon. D. E. Nicholson was appointed by the Court to assist in the defence; counsel intended to make detective investigation but had no time; all the additional evidence which petition now produces was at time of former trial unknown.

**EDWARD C. CARRIGAN.**—Am correspondent of Boston "Journal" and student at law; in spring, 1877, was member of senior class Dartmouth College and manager of College Glee Club; March 26, 1877, went to Windsor, Vermont, with glee club to give concert; while there visited State Prison; saw for first time John P. Phair; following day, by Phair's request, visited prison with glee club and gave sacred concert; arranged with Phair for the publication of what is known as his "dying statement"; agreed not to publish statement till Saturday, April 7, 1877, next day, after Phair's execution; was to have exclusive publication; was to publish in full, without change; took statement to Boston; was an agent of the Associated Press; on this account offered statement first to E. L. Beard, New England agent Associated Press, Boston; next offered to Boston "Globe," and arranged for publication; they were to publish it in full, without change, on Saturday, as desired by Phair; returned to Vermont and learned that Associated Press had secured an abstract of statement to appear the afternoon of Phair's execution, April 6, immediately explained the case to Phair, and

urged him to have his statement published on the morning of his execution; Phair denied that he ever gave an abstract to any one; said no one had statement but myself; if such a statement appeared it was unauthorized and a forgery; with aid of prison officials, persuaded Phair to have statement published Friday morning, April 6, 1877; Phair did not care to have statement published before his execution for reason that his enemies in Rutland and Vergennes would claim that it was a lie, and a plea for mercy; said it was all true and he could afford to die by it; when I secured Phair's consent I telegraphed Edwin M. Bacon, editor-in-chief of Boston "Globe," to publish the statement Friday morning.

This was Thursday night. By desire of Phair I was with him the night next prior to day appointed for his execution. A. H. Woods and D. L. Spaulding, two prison night guards, were also present; as I then believed Phair guilty, I exhorted and labored with him to secure a confession. He made no confession. I then asked him to give an explicit and minute account of himself, from evening of June 7, 1874, till arrested for murder of Anna E. Freeze. Phair said he was at Berwick House night of June 7, and Monday morning, June 8, 1874, went to Brandon to a circus; stayed in Brandon all day; returned to Rutland on midnight train from Brandon; said he went directly to Berwick House and his room; packed his valise, and, turning down counterpane, laid down till time for train for Boston. Said he went to Boston and thence to Providence; said he left Boston for Providence about five o'clock; when he arrived in Providence got off the cars to the left, and passed out into a large open square; went from depot in the direction of the Soldiers' Monument, and passed it on the left; he crossed one street and coming to a second street, turned to the left; said he went up this street till he came to a large avenue through which were passing horse cars; said he met here some workmen who were members of the Workingmen's Union, and asked about getting employment in the American Screw Company; these men told him that the old men were being daily discharged, and a stranger would not be able to secure employment; made up his mind to return to Rutland and asked workmen where he could find a good, cheap lodging-house and restaurant; was told to retrace his steps, would find such near the railroad station; did so, and found a lodging-house with a blue sign and white letters; said thought the inscription ran, "Boarding and Lodging;" here he saw a large black dog with a collar and lock; landlord was about forty-five, fat and very social; did not register, but was assigned room 18, for which he paid 75 cents; said he thought room was adjacent to room over the office, as he could distinctly hear voices in the office below; that a lamp and not gas was used; that he took his breakfast in a basement restaurant near by and on the same side of the street as the lodging-house; that he offered a torn fifty-cent scrip in pay for his breakfast; that the proprietor or clerk did not care to accept of it, but after some controversy the scrip was accepted; that he left Providence for Boston about eleven o'clock, A.M., Tuesday, June 10; that on the train he held conversation with a man who said he

was born or originally came from Vermont; that he said he was in the novelty business in Boston, and had been to Providence on business; that he Phair told the stranger that he came from Rutland to Providence to secure work of the American Screw Company; that he did not succeed and was returning to Rutland, Vt., to continue his business as a machinist; that this man offered him a commission to sell his novelties in Western Vermont; that he told him he would rather return to his old place in Rutland. Phair said he sat in the same seat with this man, and when he arrived in Boston between twelve and one that day he went to the Navy Yard; then took the train to Vermont on which he was arrested. Phair never gave me a different statement in relation to this matter than what I have stated. I never knew Marshall D. Downing till after the first reprieve of Phair; never heard or saw him before April 6, 1877; never directly or indirectly had any correspondence or communication with him till after the first reprieve of Phair.

A. H. WOOD. — Reside at Windsor, Vermont; am guard at the Vermont State Prison; was guard over John P. Phair the night prior to his execution; D. L. Spaulding was with me on duty; E. C. Carrigan, of the Boston "Globe," was with Phair also. He was conversing or writing during the night; heard Phair give an account of his trip to Providence; heard Phair say he was at Brandon at the circus Monday, June 8, 1874; said he went to Providence from Boston on the afternoon train; said he got out of the train on the left and stopped at a house not far from the depot; said he passed a soldiers' monument on his left hand; said he stopped in a lodging-house with a blue sign and white letters; think he said the words were "Boarding and Lodging;" said he saw a large black dog in lodging-house; said he stopped in room 18, over the office; that he paid 75 cents for the room in advance; said he had a controversy about a torn scrip; also, that he met a man going to Boston who was from Vermont formerly, and was engaged in the novelty business; said that the man wanted to hire him, Phair, to work on commission, selling goods; said he told the man he had been to Providence to get work of the American Screw Company, and was going back to Rutland, Vermont; Phair previously told me this same story many times.

D. L. SPAULDING. — Was guard over Phair with A. H. Wood the night before his day for execution. Witness here testified to substantially same statement of Phair as Carrigan and Wood, and that Phair had previously told him same story.

E. L. BEARD. — Am New England Agent of the Associated Press in Boston; was agent at the time of the publication of Phair's statement in the Boston "Globe." Prior to said publication one E. C. Carrigan offered the statement to me for publication. He desired it published the morning after Phair's execution. He wanted it published in full.

EDWIN M. BACON was editor of the Boston "Globe" at time of publication of Phair's statement; secured the statement from a newspaper man in Vermont a few days prior to its publication; agreed to publish the statement on Saturday morning following ex-

ecution of Phair, unless authorized to publish earlier; was so authorized and published the statement, with an editorial calling attention to its extraordinary nature; reached "Globe" office about one o'clock day of publication, and was first informed of reprieve of Phair; Col. Taylor, the publisher, informed me; Col. Taylor and myself decided to probe the case to the bottom; put some of the most trustworthy and ablest of our men to work investigation with instructions to ascertain facts and discover all evidence possible for or against Phair. Am informed that the counsel for government maintain and assert that the whole business of publication of Phair's statement and subsequent work was a newspaper scheme; I declare that such a theory is not warranted from the facts. Never knew Phair; never corresponded with him, or any agents in in reference to this matter; never saw Marshall D. Downing; never spoke or corresponded with him; have now no interest whatsoever in the Boston "Globe."

CHAS. H TAYLOR was business manager of the Boston "Globe" in April, 1877, and first knew about Phair's "dying statement" on April 4; was informed by E. M. Bacon, then editor, that such a statement had been offered to the "Globe" for publication, by one E. C. Carrigan; that the conditions for publication were, that it should be published in full, and not till Saturday, April 7, unless otherwise ordered; that the said Carrigan telegraphed orders to have said statement published Friday morning, April 6; that the statement was so published; that about twelve o'clock Friday, M. D. Downing, of Boston, came rushing into the "Globe" counting-room, and, in great excitement, stated that he thought he conversed with the man Phair on the Providence train to Boston, June 10, 1874; that he was able to fix the date by his memorandum-book of June, 1874; that he gave a description of Phair which corresponded with the one given by Carrigan to Bacon, editor of the "Globe," and detailed to me; that I deemed it my duty to telegraph Governor Fairbanks the facts; I telegraphed both the governor and sheriff; that with Downing I went to Chief of Police's office and secured from detective Ham a phototype of John P. Phair; that Downing said he was pretty certain that was the man he met on the Providence train June 10; that there was no collusion between the "Globe" and the said M. D. Downing or Phair; that I only desired to inform the Governor of Vermont of evidence which might be of value in saving the life of John P. Phair.

ALEXANDER STONE.—Reside in Providence; in June, 1874, was proprietor of a lodging-house in the city of Providence; said lodging-house was situated on Dorrance street, about one hundred yards westerly from Boston & Providence Railroad depot; William F. Myers kept a basement restaurant under the brick part of said lodging-house; near the entrance of said lodging-house was a sign of dark blue ground with white letters; entrance of lodging-house was about forty feet from Myers' restaurant; at said time ale was sold in my lodging-house. In June, 1874, I kept two large black dogs; one of these dogs wore a collar; the register of the house was not kept in sight, and I did not require lodgers to register; several rooms in the house were occupied June 9, 1874, as shown by the

register of that date; room No. 18 was not occupied by any one registering; it might have been occupied and I not now know that fact; room No. 18 was adjacent to the room immediately over the office, from which voices could be distinctly heard; price of room 18, for one person, was 75 cents; no gas but lamp-light was used at that time; was 41 years old, rather short, and weighed about 150 pounds; entrance to my lodging-house was by one flight of steps.

**WILLIAM F. MYERS.** — Reside in Providence, R.I.; am a restaurant keeper; resided in Providence during the year 1874. In June, 1874, kept a basement restaurant on Dorrance street, on same side of the street as the lodging-house kept by Alexander Stone. Said restaurant was situated about forty feet from said lodging-house entrance; Alexander Stone was proprietor of said lodging-house during June, 1874; there was a sign over the entrance of said lodging-house; said sign was about five feet long, and of dark-blue ground, with white letters; said proprietor, Stone, at said time, kept two large black dogs; ale and beer were sold at said time in said restaurant; one of these dogs wore a collar. Thomas Hanley was head-waiter in my restaurant during the month of June, 1874.

**THOMAS HANLEY.** — Live in Providence; during month of June, 1874, was head-waiter in a basement restaurant kept by William F. Myers, in Providence; there was a lodging-house in same building kept by Alexander Stone: the distance of the restaurant from Boston & Providence R.R. Station, should think was one hundred and fifty yards. There was a blue sign with white letters, over the entrance of the lodging-house; the entrance of the lodging-house was two doors from entrance of restaurant; during the month of June, I think, 1874, I was offered a torn 50-cent scrip by a man who had taken breakfast in the restaurant; asked him if it was the best he had; he said no, but it is good; that they take them up our way; looked at the scrip carefully, and finally took it. Remember the man was dressed in light clothes. He asked something about business in Providence; said something about returning to Boston; remember I showed the scrip to proprietor. Am able to fix the time as it was not long before we moved, which was in August, 1874.

**OSCAR B. MOWRY.** — Attorney; reside in Boston. On or about April 12, 1877, went to Providence to ascertain if there were any facts or circumstances corroborating the statement of Phair. Had resided in Providence several years, having spent four years at Brown University; was thoroughly acquainted with topography of city. Followed directions given by Phair, and, after some inquiry, found a person who said he kept a basement restaurant in the immediate locality corresponding to that referred to by Phair in his said statement; that the said person informed me that at Phair's alleged trip to Providence, there was adjacent to the said restaurant a lodging-house; that I learned the proprietor's address and from said proprietor received a description of the lodging-house as it existed in June, 1874; that the said lodging-house and buildings adjacent had been torn down, and the new City Hall building was

then in process of erection. At the time of Phair's Providence trip there were but few; I think two basement restaurants in that immediate vicinity.

EDGAR B. RAMSDELL. — Reside in Cambridge, Middlesex Co., Mass. From February, 1875, to January, 1877, was confidential clerk of James G. Pierce, 25 Howard street, Boston. Pierce frequently conversed with me about the trial of Phair for the murder of Anna E. Freeze at Rutland. He told me he was the means of convicting Phair. Said he made a good thing out of it. Pierce has told me several times about this trial; said he paid the expenses of Morris Livingston to go up and testify against Phair, and he got a good sum for what he did. Know Pierce well; he was utterly untrustworthy. Would not believe him under oath. He has no reputation for truth and veracity; was at that time reputed to be a notorious thief, and a proprietor of a house of ill-fame. Here two indictments against James G. Pierce were presented. — [INDICTMENT. — At the Municipal Court of the city of Boston for the county of Suffolk, for the transaction of criminal business, on the first Monday in February, 1859, James G. Pierce, of Boston, broker, was indicted for stealing on the 2d day of December, 1859, at Boston, thirty silver spoons of the value of one dollar each, one silver caster-stand of the value of ten dollars, two silver knives of the value of one dollar each. He plead "GUILTY." It was considered by the Court that Pierce be punished by confinement at hard labor in the House of Correction in the county of Suffolk, one year. Following the above indictment was read an indictment for receiving and holding stolen goods, to which James G. Pierce plead not guilty, but subsequently paid costs and the indictment was *not proseed.*]

JOHN DONOVAN. — Reside in Boston; am clerk at the Adams House, Boston; was clerk in June, 1874; went to Rutland, Vermont, in June, 1874, to identify John P. Phair; the morning of the identification, with the other Boston witnesses, I stood on the corner of a street and saw a man led through the street handcuffed, and a great crowd of people were following him; told the other witnesses that it was not right to stand where we could see the prisoner led by; the witnesses replied, in effect, "Oh, it doesn't matter, that is the man"; the prisoner was handcuffed when he was led by the other witnesses; I was not able to identify Phair as the man who signed "E. F. Smith, St. Albans, Vt.," except as the man I saw led through the street; I was not able to identify the respondent at the trial as the E. F. Smith who registered at the Adams House; the man E. F. Smith had black whiskers and mustache; the whiskers and mustache were much darker than that of the prisoner; did not testify to this fact, as I was not questioned; told the detectives, Stearns and Thornton, about it, but they stated that probably Phair had dyed his whiskers and mustache.

MILFRED F. MATOL. — Live at Platsburg, Clinton County, N. Y.; knew John P. Phair in 1874; was at Brandon June 8, 1874; drove a coach from the Brandon depot to the circus grounds with Walter F. Scott; saw John P. Phair that day; he was sitting in the billiard hall of the Brandon House when I saw him.

Mrs. ROBERT McLAUGHLIN. — Live in Vergennes, Vermont; have lived there several years, and done washing; June 15, 1874, I received a package delivered by John Grant; the package was an express package, and marked "from Rutland"; it had a United States and Canada express tag or label; the package contained a bundle of clothes; the clothes were much stained with blood, and were women's clothes; the clothes were marked "Aurelia Brooks"; the chemise was completely stained and spattered with blood on the breast and down the outside front; the blood was black and heavy; it took three washings to get the blood spots out of the chemise and skirt; the petticoat was covered with blood in front; the other clothes were more or less stained through the texture of the cloth; never saw clothes in such condition before or since; I called in my husband and others to look at them, as it excited my suspicion; I know it was impossible to have been caused by menstruation; Mrs. Brooks, Aurelia's mother, paid for the washing; the clothes were sent to Whitehall, New York; I believe that some crime had been committed; the spatters were dark and heavy; the sprinkles appeared to have been occasioned by spurts of blood.

ROBERT McLAUGHLIN. — Live in Vergennes; saw the package of bloody clothes; the chemise and other garments were much stained; the tag was a United States and Canada express tag; the blood was in dark heavy spots on the chemise.

LIZZIE COFFIN. — Live in Vergennes; worked for Mrs. McLaughlin in June, 1874; saw the bundle of bloody clothes; John Grant, the expressman, brought them; the clothes was marked "Aurelia Brooks"; the blood on the chemise and skirts was in heavy spots, and spattered completely over the front of each garment; every article was more or less stained; looked as if the blood was spurted over the breast of chemise and skirt; never saw clothes in such a condition before; the clothes were sent to New York to Aurelia Brooks; old Mrs. Brooks paid for the washing.

EDWARD S. HAYES. — Live in Vergennes; knew Aurelia Brooks; saw the package of bloody clothes; John Grant delivered the bundle; the tag was marked "from Rutland"; the clothes were stained and spotted with dark heavy blood; saw them when Mrs. McLaughlin opened the bundle.

#### EVIDENCE OF STATE IN REBUTTAL.

S. W. ROWELL. — Am cashier of Rutland National Bank; have had experience in examination of hand-writing. (Photographs of hand-writing of E. F. Smith, as written on Adams House register, with E. F. Smith, as written by Phair in Rutland jail, were here handed witness); I have bisected each photograph longitudinally, and pasted the upper half of the one over the lower half of the other, so as to match the different bi-sections; I find that they match letter by letter, element by element, curve by curve, and space by space, as though written with one stroke of the pen. The matching is remarkable. A man not writing a fixed hand would rarely be able to write the same words to match so precisely even when he made special effort to do so; it would be almost impossi-

ble for a man to make a signature on a hotel register and the same signature under different circumstances and match them so precisely; my opinion is that the originals of these photographs were written by the same hand.

*Q.* Would you, considering the suspicious and remarkable resemblance, as well as the general character of the writing, be willing to cash a check of \$10,000, on the genuineness of the writing, unless you had other evidence that they were written by the same hand?

*A.* I would not.

**GEO. PHIPPEN, JR.** — Am receiving teller of the Suffolk National Bank, Boston; have seen the signature E. F. Smith on the Adams House register, and E. F. Smith and John P. Phair on a separate piece of paper; I have no doubt that they were written by the same hand.

**WILLIAM F. MYERS.** — Have given an affidavit in the case of John P. Phair previously; there were several blue signs on the front of the building containing my restaurant and Stone's Hotel, but never had on them "boarding and lodging;" the Soldiers' Monument, which is about fifty feet high, stood immediately in front of the building, and about sixty feet from it; in June, 1874, had one hundred and twenty boarders, about half of whom were transient.

**ALEXANDER STONE** testified as to signs and monument, same as preceding witness, that the dog mentioned in the former affidavit would weigh about fifty pounds.

**ALBERT C. JOHNSON.** — In 1874 was on police force of the city of Providence, and am now deputy sheriff in same city; in 1874 a woman claiming to be a sister of one John P. Phair, gave me a photograph of Phair, and a letter in which he gave directions, descriptions of signs, the incident about the torn scrip, etc., etc. [substantially as given in his statements to E. C. Carrigan, A. H. Hood, and other witnesses]; I searched diligently in July, 1874, and showed the likeness at places that in any way answered his description, but could find no trace of him; I received no pay for my services.

**JAMES O. SWAN.** — Had my attention called to Phair's case by Stearns and Thornton, in June, 1874; these men gave me Phair's account of his trip to Providence, which was substantially as testified to by Johnson; we found Stone's Hotel and Myers' restaurant, but no one remembered anything of Phair; the building had blue signs in front, but the words "Boarding and Lodging" were not to be found; went to Rutland for the State, and was there during the trial; was not called upon to testify.

**HART B. PIERCE** accompanied Johnson on his researches in Providence in 1874, but could find no trace of Phair.

**N. S. STEARNS.** — Am the Stearns who testified at Phair's trial; procured the attendance of Pierce and other witnesses from Boston; paid him his expenses and \$15 besides; he received nothing else. [Witness here testified, virtually, the same as Swan, in regard to the Providence trip.] Phair told me that he stopped at Providence when he came home from the war; Thornton and myself got \$2,000 of the reward.

OLIVER J. CAIN. — Was bar-tender at the Berwick House when Joseph White and John P. Phair boarded there; it was not possible to see the windows of the room occupied by Phair from the room occupied by White; it was half a mile from the depot to Mrs. Freeze's house; the midnight train arrived in Brandon about 12.40; I have kept saloon ever since 1874.

Mr. McCALL then made the opening argument for the petitioner as follows:—

The proper subjects of discussion at this hearing are the affidavits annexed to this petition, the affidavits attached to the previous petition for a new trial, and so much of the evidence adduced at the trial as may be necessary to give the clear relations of the new evidence to the case as it appeared before the jury. While by statute the basis of the present petition is limited to evidence not previously before the Court, the evidence upon which the former petition was based is as much a part of the record as the evidence taken at the trial. When the petitioner is once given, upon his evidence, a standing in this Court, it is then manifestly proper for him to review the whole record, and if upon all the evidence, the evidence at the trial and the evidence since discovered, he can satisfy the Court that a jury would now be likely to render a different verdict, he is entitled to a new trial.

The affidavits of White and Matot tend to prove that Phair was at Brandon on the 8th of June, 1874. This evidence is by no means irrelevant simply because it does not prove an alibi to the murder. His statement that he was at Brandon was before the jury. He not only failed to prove that he was there, but all the evidence in the case tended to prove that he was not. The State's Attorney made no unwarrantable statement when he said in effect to the jury, "You will find that he lied about going to Brandon. Since he has lied concerning his whereabouts on that day, you will find that he was at Mrs. Freeze's house from Sunday evening until after the murder." That Phair should lie concerning his whereabouts on that day would be a very serious circumstance against him. He now shows that he was at Brandon, and accounts for himself until 1.30 o'clock on the morning of the murder. He was accounted for at the trial after 3.45 o'clock on the same morning. There remains for him, therefore, but a little more than two hours to twice traverse the distance between the Berwick House and Mrs. Freeze's house, commit the murder, which, with the attendant burning of the house, was most deliberate, execute the robbery, and do all this in the manner alleged, without a single blood-spot upon his clothes and with nothing in his appearance, when first afterwards seen, to justify a suspicion of the crime. The chances that he committed the murder under these circumstances are almost infinitely less than under the state of facts before the jury, viz., that he was at Mrs. Freeze's house for the thirty-six hours preceding the murder. It does not at all meet the case to say that he *might* have been at Brandon and still have committed the murder. This evidence strikes at the very heart of the issue. The jury were justified in supplementing the possession of the murdered woman's goods in Boston, — which fact alone, unaccounted for,

would not be sufficient to support a conviction of murder in any just court, — by his false account of himself for a considerable time before the commission of the crime, and render such a verdict as was rendered. But now, when it is shown that he truly accounted for himself, and that barely two hours remain at a time of night when but few could produce witnesses for their whereabouts, it would be to go in quest of and to follow the most harsh and austere maxims of the law to seek an explanation of this new evidence on the theory of guilt.

The affidavits of Leavitt and Bond tend to prove that Mrs. Freeze was seen about the middle of the night on which she was murdered, in a hack with a man other than Phair, which hack was being driven in the direction of her house. When the character of this woman's house is considered — a brothel, infested by the most abandoned class in that whole section of the State — and that when last seen alive by any witness, and but a few hours before her death, she was in a hack at midnight, with a strange man, it would be most cruel to deny the right of this man to have the benefit of this fact before a jury.

The deposition of Downing affords an identification of circumstances, and through them of the man. And here the question may arise, Why has not Downing made some attempt to personally identify Phair? This question is susceptible of an easy answer. If he should identify Phair, whom he had but once seen, and casually, years ago, among many other strangers, and when Phair was at liberty, in the flush of health, and with whiskers upon his face, while now he is pallid from long imprisonment and excitement, his face smooth shaven, his hair closely cropped, and his garb that of a prisoner, such an identification would brand his testimony with the gravest suspicion. What an opportunity would it give to the representatives of the State to raise up their favorite cries in this case of "fraud," and "newspaper sensation," which they have shrieked from the outset, upon general principles, and without any evidence. We did not need to subject Mr. Downing to any unnatural tests. We will show your Honors, by far better evidence than any improbable testimony of personal identification, that Downing met Phair on that noon train from Providence. We shall convince you that this is true by circumstances, isolated, minute, scattered through three years, and over several Commonwealths, and all tending to a common point — circumstances so preserved and recalled, in accordance with the laws of memory and the preservation of human events, as to preclude any suspicion of forgery or mistake; and by witnesses disconnected and unknown to each other, so that if you discredit them, you will be compelled to believe that they committed concurrent perjury upon the same point when they had no opportunity for complicity, and not a shadow of a motive for telling anything but the truth. During Downing's return trip from Providence, by the train that reached Boston about noon on June 10, 1874, he met and conversed with a man who said he was a mechanic; that he came from Rutland, Vermont, and had been to Providence to get work from the American Screw Company. It is extremely improbable that

two men should have gone from Rutland to Providence on the same errand, and have returned by the same train. The supplement to the testimony of Downing are the affidavits of Perry, Carrigan, and the prison guards. Downing's attention was attracted to this case by reading Phair's statement, published in the *Boston Daily Globe* of the 6th of April, 1877, and especially those parts of it mentioned in his (Downing's) deposition. It does not appear that he read anything in that statement about Phair's having met a man on the train from Providence to Boston, and, in fact, no such information was conveyed. But the affidavits of Perry and Carrigan prove that Phair had stated that he met a man, a stranger to him, on that same train, who said that he was in the novelty business in Boston; that he originally came from Vermont; that he asked Phair to work on commission for him, and that they sat together on the same seat during a considerable part of the journey. Downing answered this account precisely. It is monstrously improbable that Downing should have met a man on that train so closely meeting Phair's description of himself at that time, and that man be another than Phair. It is equally improbable that Phair should have met a man on that same train answering so closely his description of Downing to Perry and Carrigan, and that man not be Downing. But these two improbabilities coupled together make it a moral certainty that Phair and Downing met on that train. It is to be noted here that neither Perry, Downing, nor Carrigan had ever met or communicated with each other before the first reprieve; nor had Downing ever communicated with Phair, unless on the train from Providence. Now, if Phair was on that train, we have proven here a clear and direct alibi to the pawning of the goods to Pierce, to the signing of the pawn-ticket, and to the selling of the rings to Ehrlich. If Phair did not do these things, there is no probability that he signed the name "E. F. Smith" on the Adams House register, or disposed of the other goods to the other pawnbrokers. There is another direct piece of evidence that Phair did not write the name on the register, and that is the testimony of John Donovan, Jr., the clerk of the Adams House.

This gentleman, whose occupation would naturally require and cultivate a great power of remembering faces, swears that the man who registered that name differed materially in appearance from Phair; in this connection it may be stated that, while all the Jews who are so clamorous in their oaths against Phair, identified him positively at the trial, Mr. Donovan, whose testimony in that regard would naturally exceed in value that of all the Jews combined, could not identify him; that the Jews should concurrently swear in such a forward manner on the point of identity is a very suspicious circumstance. But if it could have been known to the jury, as it is now known to your Honors, that the chief witness, Pierce, was a professional thief; that Isaac Smith, who in remembering Phair displayed a remarkable power of recollection, and in forgetting Judge Evarts displayed as marvellous a power of forgetting, was a felon, with the fresh laurels of penal service upon him; that this same Smith came to Rutland and testified against Phair under an

assumed name ; that the reward-seeking detectives attempted and probably effected bribery (which may account for the wonderful quickening of Ehrlich's memory) ; what a vast weight must these facts alone, omitting now the other new evidence, have had upon the deliberations of the jury ? But when we consider with these facts the other new evidence already recited, how decisively would it have weighed with the jury.

Further corroboration of Downing, if any is needed, is found in the testimony concerning the places where Phair lodged and took his meals while in Providence. Many of these facts are very important, and, taken together, they are quite conclusive. Why, for instance, should Phair say a *lamp* was used in the room in which he slept. Any one merely guessing would have said the light was gas in such a large city. Yet in the room which Phair described gas was not used at that time. Then, again, his statement concerning the number, price, and location of the room, the black dog, and the office, can leave no doubt, if there was no collusion, that his story about going to Providence is true. Phair described this lodging-house and restaurant, when arrested, to the detectives. If all his subsequent statements are dismissed and only those made to Stearns and Thompson considered, there is ample information to warrant all the discoveries in Providence. Phair stated to these officers the direction of the basement restaurant from the depot, the relative location to that restaurant of the lodging-house, and the color and purport of the signs on the front of the building. The fact remains, that at that time the basement restaurant and lodging-house were located with reference to the depot and to each other, just as Phair had described, and no other basement restaurant and lodging-house in that whole section of the city were relatively so located ; and, further, the color and purport of the signs at these places were what Phair had described them to be. The variance in the wording of the signs, which the State has been at such great pains to establish, is even in favor of the truth and genuineness of the narrative. Phair arrived in Providence in the early evening. He was in search of a place where he might eat and sleep after his long journey. Those signs informed him that he might get in that building both board and lodging, and he was interested only in the purport of the signs. The color of the signs — the blue ground and white letters — would naturally become impressed upon his mind, but the exact wording he would as naturally forget. The sequel, therefore, shows that what one would be most likely to remember, Phair remembered accurately, and what one would be most likely to forget, he remembered in substance. This little error, therefore, is a strong witness to the truth of the whole story. The detectives for the State really suppressed the evidence in regard to the trip to Providence. They testified that, although they made diligent search in Providence, under the guidance of one thoroughly conversant with the city, they discovered no such places as Phair had described to them.

This testimony, taken in connection with the absence of proof on the part of Phair, tended to prove the whole story about the trip to Providence a lie. It now appears from the testimony of Detective

Swan, who acted for the State, and who appears here as a witness for the State, that all these facts were within the knowledge of the detectives at the time of the trial. The corroboration of Phair's account of himself in Providence seems complete. But a way is devised to avoid its force. The witness who stands in the breach has a record. If the testimony of the State now introduced in rebuttal is to be believed he rankly perjured himself at the trial; he suppressed the Providence evidence in Phair's behalf; he labored anxiously upon Donovan to have him identify Phair; he gathered from the charnal house of Pierce, in Boston, the most abandoned and dissolute set of witnesses that ever disgraced a court of justice; according to his own admission, he put in his pocket \$1,000 blood-money of the large reward offered for a conviction; he came to the rescue of every critical point of the State's case at the trial, by testimony as to some admission he had wrung out of Phair. The name of this witness is N. S. Stearns; the exigency of the State in regard to the Providence testimony is manifest, and he is not wanting. He now testifies that Phair admitted to him at the time of his arrest that he was at Providence just after the war. This would account for the knowledge of the city which Phair exhibited in his statements. I do not believe it is necessary for me to argue this testimony in this court; I do not believe for a moment that your Honors will entertain such a suggestion coming from such a source.

In regard to the hand-writing, the resemblance is too great between that written by Phair and that on the Adams House register, on account of this perfect matching of lines, spaces, and curves; a witness of the State, cashier Rowell, testifies that he would not take the cashing of a \$10,000 check on the identity of the hand-writing. Such evidence ought not to hang a man. When you consider the channel through which this evidence comes, — a channel that has conducted into your courts the drainage of the sewers of Boston, and has polluted even them, you will be justified in believing this hand-writing a too cunning forgery. From the position of the name upon the register, ample opportunity of forgery was permitted, and the very few that were registered before this name, compared with the number who usually register before the time of day this name purports to have been written, and other suspicious facts, invite this explanation.

One other suspicious thing may be noticed in regard to the pawning of the goods. When Phair arrived in Boston, he rode immediately to the Providence depot; now then he begins his pawning, if the testimony of the State is true, soon after his arrival and in a part of the city far distant from the Providence depot; he then goes to another extreme of the city and sells the rings, and then returns to the vicinity where he began and completes his work. I submit that this is a very unnatural course, and it is still more unnatural that he should visit nearly all the Hebrew pawnshops in Boston to dispose of a few goods. He could easily have disposed of them all to Abrams without this canvassing for so many witnesses against him. And that the detectives should have brought into court so many pawnbrokers and so many friends of pawnbrok-

ers, who were conveniently present in their shops at the pawning, that they might reproduce from their truly marvellous memories a minute account of matters which for them could possess no interest, affords a strong ground for the belief that they hoped, in the hue and cry against this destitute man, their witnesses would be counted and not weighed, and, therefore, they sought to build up a bad cause with the concurrent perjury of many persons. This would account for the dense and black cloud of witnesses which they produced at the trial.

In regard, generally, to the witnesses in Phair's behalf, only a word is necessary. There is not the slightest reason to consider their testimony with suspicion. This man has not the means to effect bribery. He has depended entirely upon the aid of charity. No witness has had any possible interest to swear falsely. Many of them have given their time, and some have liberally contributed their means to aid in his defence. At the trial not only was Phair without evidence in his favor, but the tendency of all the evidence was to prove that he lied. And yet under these circumstances the jury deliberated several hours, and came in a second time for instructions before rendering a verdict. The evidence newly discovered tends to show that Phair gave a true account of himself, and to derange all the theories of the prosecution. Can there, therefore, be any doubt that, if this evidence had been presented at the trial, the jury would have been likely to render a different verdict?

STATE'S ATTORNEY LAWRENCE then followed Mr. McCall for the prosecution:—

From the evidence in the former trial it appears that Anna E. Freeze was murdered and her house burned, June 9, 1874. That about 5 P.M. the same date the name "E. F. Smith, St. Albans, Vt.," was registered at the Adams House, Boston. In the room occupied by E. F. Smith a shawl of the murdered woman was found, also that goods subsequently recognized to be property of Mrs. Freeze were pledged by one claiming to be E. F. Smith, from St Albans, and stopping at the Adams House. On June 10, 1874, goods of the murdered woman were pawned by E. F. Smith to James G. Pierce, 25 Howard street, also to one Ehrlich, another Boston pawnbroker. The respondent was identified as the E. F. Smith who pledged the murdered woman's goods. Soon after arrest, Phair wrote the name E. F. Smith, St. Albans, Vermont, which by best of experts is shown to be the same hand-writing as E. F. Smith on Adams House register. Phair was unable to account for himself from Sunday eve, June 7, till Tuesday 3.30 A.M. His room does not appear to have been occupied. When arrested, he could not give a satisfactory account of himself. He was unable to give the name of a single person he met in going to Providence and return, except Mr. and Mrs. Stewart, of Rutland. He contradicts himself when questioned as to his first knowledge of the murder and arson, as seen by the testimony of Van Neider.

In Phair's valise were found new shirts, which he claimed were purchased at Mr. Haven's, in Vergennes. This on trial was proven false. As to Donovan's testimony regarding the color of respond-

ent's whiskers, nothing can be made but to support the belief that Phair was the E. F. Smith as deduced from Stewart's testimony in respondent's behalf. Again, the evidence of hand-writing is enough alone to make any sane person confirmed in the guilt of respondent. It cannot be explained away. It completes the chain of which not a link is unsound. There cannot be a doubt, much less a *reasonable* doubt. Matot's affidavit slightly tends to show Phair in Brandon, June 8, 1874, yet he does not swear that he knew Phair positively, nor does he give any reason for remembering the event. This disposes of the so-called *new evidence* as regards Phair's presence in Brandon, June 8. If Phair had been in Brandon he had ample time to commit the crime, yet the evidence that he was there is far from conclusive. Phair endeavors to account for himself in Providence. Has there been a person to swear that the respondent was seen in Providence? Has Hanley sworn that he recognized the convict by a photograph, much more identified him at Windsor? Why has not Hanley been taken to Windsor to test his memory and identify Phair? At Providence the location of the lodging-house was found, but where is the sign "Boarding and Lodging"? The principal sign on Stone's lodging-house was "Hotel." It is true there was a blue sign with white letters, yet the prominent sign was "Hotel." Again, why did not Phair recall the fact that a monument was near the location described by him. This was of all the objects in view the most noticeable. It can not be conceded that a man on trial for his life would omit such a prominent witness. The monument was there a silent, substantial witness to the truth, if such a truth it was. It cannot be probable that such is the case. The first we hear about the monument is in evidence adduced at this trial. In addition to the monument the fertile imagination of Carrigan, Wood, and Spaulding give birth to the full grown black dog about which so much has been said and written. Again, the particular business of this man was not known till after respondent's conviction and incarceration at Windsor, of all the verbiage of Downing, but one clause, if any, is admissible, unless that which relates to his endeavor to describe the man he met on the Providence train, and even that description is general and would apply to a thousand others.

Downing stated that he saw a picture of Phair, and which he pretends to identify as the man he met on the train. It does not appear in evidence that the photograph he saw was of Phair. If it was Phair's photograph, why is the fact not shown? The defence cannot presume to ask us to accept this statement when it is not shown to be of Phair. Then why has not Downing been to Windsor to identify the man Phair, and upon seeing him to say whether or not he was the man he met on the train? Is there any excuse for this? Is there any reason for this part being left undone? This is the vital link of the defence; in its weakness the whole chain is destroyed. There is nothing been left undone by the vigilant scrutiny and able management of the defence that would benefit Phair. The Legislature, since the reprieve had been besieged, the State Prison, as it were, undermined to save this man. The Courts' attention, again and again, by some new turn and technicality, has been

drawn to this most celebrated case. Yet withal, this man Downing is not called to identify the respondent. Allowing the testimony of the several witnesses for the defence to be substantial and admissible, what can it weigh against the overwhelming evidence of the hand-writing, and the identification by the Boston witnesses for the State. It also appears from the time-tables of the Boston & Providence road that Phair might have gone to Providence and pawned the goods. 'Tis true there is to be made an allowance for time, yet it can be explained consistent with Phair's guilt and Downing's statement, both may be true. The Court will not grant a new trial unless the evidence adduced here is sufficient to change the result. To those who would look with the keenest regard to right, there does not appear from all the evidence here presented a valid reason why the prayer should be granted, and the case returned to the lower court.

Ex-Gov. JOHN C. STEWART followed Mr. Lawrence, and made the closing argument for the State. Mr. Stewart made a very eloquent argument, and it is to be regretted that he spoke from a very meagre brief, and that no report of it is extant. He said he represented the people who were interested in law and order, and whose safety demanded that felons of high degree should be punished. This man had been convicted and sentenced to die. The Courts had carefully examined his case and refused relief. He was relieved. It was announced that there were strong evidence in his favor. The press took up his cause. Like "*Fama*" in Virgil, it had grown with the telling; it had *crescit-enudæd*. He now comes into Court with a great mass of testimony. What is there in it all? Nothing if the affidavits of Matot and Downing are excepted, and both of these testify to facts so remote in time, and unimportant, that their evidence should be regarded with suspicion. It was merely an effort to help Phair break jail. Counsel had said that the hand-writing was forged? Where is the evidence, and how was it forged? The name on the Adams House register was first written, and Phair was seen to write the other name. The Court would not be influenced by these sentimental proceedings. All the tears from all the eyes of professional philanthropists for the last five hundred years could have no weight in view of the overwhelming evidence against Phair. It stood out like a mountain against him; like that monument in Providence which he did not see, although it was in front of the very house in which he pretended to have stopped. There was a temptation for him to say a great deal in this case, but he would not yield to it. It was getting now so that a writ of error lay from our Supreme Courts to the newspapers. This revising of decisions by such agencies should be firmly and unhesitatingly repressed. Hon. Charles B. Eddy then closed the case for the petitioner, as follows:—

#### MR. EDDY'S ARGUMENT.

In considering the question,—whether a new trial should be granted,—it is necessary to consider the case as developed before the jury that rendered the verdict of "Guilty," as well as the evi-

dence discovered since the conviction. The conviction was upon evidence wholly circumstantial. However strong it may be claimed the case was, as made against Phair on the trial, there were lacking some things the existence of which would have been necessary had he been guilty of the crime.

The evidence on the part of the State was to the effect that Mrs. Freeze died from loss of blood flowing from the wound in her neck, which severed the arteries, veins, and wind-pipe, and that it was hardly possible that the person who inflicted this wound could have escaped without bearing upon his clothing some of the blood of his victim. Such was the evidence of the eminent physicians and surgeons who made examination of the body and the wound, and who were introduced as witnesses by the State. All the clothing and effects which Phair possessed previous to and at the time of the murder were taken possession of by the State in less than forty-eight hours after the crime was committed, and submitted to the most searching scrutiny and most careful tests by the same physicians and surgeons, and they testified that they were unable to find the slightest trace of blood upon any of them. There was no pretence that Phair possessed any article of clothing at the time of the murder that was not thus examined for blood-stains.

The evidence on the part of the State established beyond question that Mrs. Freeze had in her possession on the night of the murder \$300 or \$400 in cash. Mrs. Freeze usually had on hand quite a sum of money, and had a passion for exhibiting it. Her frequent exhibition of it made it generally known that she had it. It was argued by the State that the motive for the commission of the crime was to obtain possession of this money. Phair left Rutland on the 4 A.M. train on the 9th of June, 1874, and was arrested on the evening of the 10th, on the train, on his return to Rutland. He then had upon his person only \$5.65. He arrived at the Providence depot in Boston, about two of the clock, P.M., of the 9th, and was accompanied from Rutland to this depot by Mr. and Mrs. Stewart, of Rutland. He had no opportunity to spend any considerable amount of money up to two o'clock in the afternoon of the 9th. At five o'clock, P.M., of the 10th, he took the train at the Boston & Fitchburg depot, on his return. From this time up to his arrest, he had no opportunity to spend money, except for his passage ticket, and refreshment at the railroad stations. The person who pledged and sold Mrs. Freeze's goods in Boston received \$50 for them. Phair's arrest was made on the train, and before he was aware he was suspected, or that any officer was near him. His return to the scene of the murder so soon, unmistakably indicates that he did not know he was suspected as the criminal. He, therefore, had no motive to dispose of or secrete any money, and there was no pretence on the trial of any evidence that he had done so. The small amount of money found on Phair's person, and the absence of blood-stains upon his clothing, are not consistent with the theory of his guilt, and are weighty circumstances in favor of his innocence of the crime charged.

There was also a further weakness in the case made by the State.

Stearns and Thornton, the Rutland detectives, operated under the stimulating effect of an offer of \$2,500 reward for the detection and conviction of the criminal. They took several pawnbrokers and their "chums" from Boston to Rutland, after Phair's arrest, to have them identify Phair as the person who pawned the goods. These reward-detectives exhibited to these witnesses, before they went to Rutland, a photograph of Phair, and gave to them a full description of him and of his clothing, thus enabling them to pick out Phair when they did go to Rutland. Evidence of identity coming from such witnesses, thus coached and prepared by men who had \$2,500 at stake, is suspicious and unsatisfactory.

The case, as developed before the jury, considered in connection with the evidence discovered since the conviction, shows still further weakness, and shows great wrong practised upon the now condemned man. It seems that the spirit of greed took possession of the reward-hunters, and made them reckless so far as even decency was concerned in their efforts to win the stakes.

The testimony of John Donovan, Jr., now shows that when the State's Boston witnesses went to Rutland, in 1874, to identify Phair, that it was arranged that the identification should take place at a public hall, and that while the officers were taking Phair to the hall, handcuffed, these witnesses were stationed on the street, and Phair was led by them, and their identification of him at the hall was after he had been, in the manner described, unmistakably indicated as the man under arrest and charged with the crime. This, in addition to the photographic and descriptive preparation furnished by Stearns and Thornton, most seriously impairs their testimony.

Donovan's testimony also shows that, when he saw Phair at Rutland, he told Stearns and Thornton that he should not want to swear that Phair was the man who registered at the Adams House; that his mustache and whiskers were not as black as those of the man who registered as E. F. Smith; and that these reward-pursuers replied to Donovan, "Perhaps Phair had his mustache and whiskers dyed when the name E. F. Smith was registered." They well knew this suggestion was false. Phair had fallen into their hands early on the morning of the 11th of June. If his mustache and whiskers had been blackened by dye, they, and all who knew him in Rutland, would have detected it. The case showed nothing of the kind, and the suggestion was false — the wicked product of greed. It is now made to appear on this hearing that Phair wrote a letter to his half-sister, in Providence, soon after his arrest, giving the location and description of the lodging-house and restaurant where he claimed to have lodged and to have taken his meals on the night of the 9th of June, and morning of the 10th, giving the number of the room occupied by him, and many other details of description, and requested her to have the matter looked up. She placed this descriptive letter in the hands of a Providence officer to investigate, and he knew from the description where the place was, and found it answered Phair's description remarkably well; but, unfortunately, this officer, while making these investigations, fell into the hands of Stearns and Thornton, and

they made the investigations with him, and it was left for them to report whether there was such a lodging-house and restaurant in the location given by Phair; and they returned to Rutland, reported that they had visited Providence, made thorough search, and could find no such lodging-house and restaurant; that nothing of the kind existed answering Phair's description; and they so testified on the trial. This Providence officer now gives his testimony, and it shows that the testimony of Stearns and Thornton was false.

Counsel for the prosecution recognized in their argument to the jury the importance of the truth or falsity of Phair's claim that he was in Brandon on the night of the 8th of June, and stayed in Providence on the night of the 9th. The charge of the Court also recognized it. It was, on the trial, virtually conceded that, if Phair stayed in Providence on the night of the 9th of June, and returned to Boston about noon on the 10th, that he could not have been the person who registered at the Adams House as E. F. Smith, and who pawned the opera-glass and shawl to Pierce at 10 o'clock, A.M., on the 10th. If Phair was in Brandon on the night of the 8th, and returned on the train to Rutland after midnight, it is much less probable that he was at the house of Mrs. Freeze at all that night or morning. And, in view of the conceded character of the place she kept, it is more probable that some other person or persons were there. The affidavits of Charles A. Leavitt and Charles A. Bond strongly tend to show that a person other than Phair was there. They saw Mrs. Freeze in a carriage, about midnight, with a man who was not Phair, going towards her residence. The affidavits of White and Matot show that Phair was in Brandon on the night of the 8th, and returned to Rutland after midnight.

The testimony of Marshall A. Downing is of great importance. He was most critically examined, and cross-examined and a careful examination of his testimony can leave no other impression than that he is an honest witness. He gives good reasons for his recollections. His conduct subsequent to reading the statement of Phair, on the morning fixed for his execution, gives an honest character to the story he tells. Being convinced from Phair's statement, and from the entries in his books, that on the forenoon of June 10th, 1874, he journeyed from Providence to Boston with him, occupied the same seat and conversed with him, he went to Chief of Police Savage, in great mental anxiety, and made known to him his convictions, and was advised to send a telegram to the governor. He did not know the place of the residence of the governor, and sent telegrams to various parts of the State, and came quite near being too late to stop Phair's execution. The affidavits of E. L. Beard, the Boston agent of the Associated Press, Edwin M. Bacon, then editor-in-chief of the "Globe," Col. Taylor, the manager of the "Globe," and E. C. Carrigan, in connection with Downing's testimony, repel the idea of any scheme to defeat justice. Downing had never before heard of Phair by name, did not know of his prosecution and conviction until he read his statement. Immediately after his arrest Phair told M. C. Perry of meeting, occupying a

seat, and conversing with a stranger on the train from Providence to Boston, on his return trip, on the 10th of June, and gave an account of the subjects they conversed about substantially the same as Downing recalled on reading his statement.

Phair also gave to Col. Veazey, his counsel, the same account soon after his arrest. He also gave the same account to the prison guards, on the early morning of the day he was to have been executed. The showing excludes the idea of collusion between Phair and any other person to bring about a reprieve. This statement of the condemned man, — told on the early morning of his arrest, — repeated to his counsel and to Perry, — and again on the day on which he was to die, — did not, by either accident or fraud, so well comport with what the newly discovered evidence has brought to light. On his trial he was unable to find any evidence to support his account of himself on the nights of the 8th and 9th of June. He was without means and friends, and put upon trial in one week after he was arraigned, and counsel assigned to him. The jury did not have the opportunity to weigh this newly discovered evidence, and did not have the opportunity to weigh the evidence produced on the trial in the light of this.

Much stress has been placed by the State upon the hand-writing evidence. This, as an element in the case, undoubtedly operated strongly against the respondent. But this kind of evidence is not always unerring. Like all other evidence from human sources, it is capable of misleading. There are ear-marks about the writing, in connection with the circumstances under which it was obtained, and in view of the newly discovered evidence, that suggest more than a mere doubt in relation to it. The hand-writing of a person can be so imitated as to almost, if not quite, defy detection. Too much *fac-simile* is an element of weakness. So close a matching of lines and spaces is suggestive of forgery. The State has made too much of this. The experts produced by the State all say that Phair had not acquired a fixedness of hand-writing. The reward-hunters went to the jail in Rutland, and asked Phair to write his name on a sheet of paper, which he readily did. They then asked him to write "E. F. Smith, St. Albans, Vt.," which he as readily did. They then went to Boston. On the trial, this sheet, with the writing, was produced, and also the Adams House register, with the name "E. F. Smith, St. Albans, Vt.," on it. One is a perfect *fac-simile* of the other. Photographs of each have been taken, and these having been cut from right to left through the centre, it is found that the upper half of one will exactly fit and match the lower half of the other. Each line and space is an exact fit. There is altogether *too much fac-simile*. If this man, not accustomed to write much, a mechanic, wrote "E. F. Smith, St. Albans, Vt.," on the Adams House register, on the 9th of June, 1874, and the Sunday following, in jail, at Rutland, under arrest, charged with murder, at the request of those seeking \$2,500 and his life, again wrote upon a sheet of paper the same letters and words, so there was an exact correspondence in spaces and lines, so that the half of one would exactly match and fit the half of the other, then there occurred in that jail, on that Sabbath, what never has been accom-

plished, by any other person since the dawn of creation, and what never will occur again. Such perfect exactness does not come from one not having a fixedness of hand-writing.

In view of the importance of the issue raised by the indictment, and the plea of not guilty, and that the law gives to the respondent the benefit of every reasonable doubt, the respondent does not ask too much of the State of Vermont, and of this Court, in the prayer of his petition, that a new trial be granted.

On the 5th of February Chief Justice PIERPONT rendered the opinion of the Court, as follows:—

We have received and considered everything that was shown before the jury on the trial at which he was convicted, — everything presented on his former petition for a new trial, — everything before the Legislature, offered then as a reason for enacting the law under which the petition is made, and all the new evidence procured for this hearing. We refer to this for the purpose of saying that the course we have taken in this case is not a precedent for future applications of this character. The goods were disposed of in Boston. The party transporting these goods to Boston, and then disposing of them, murdered Mrs. Freeze. That party must have left Rutland on the morning of the 7th of June. When the fact is established who took the property to Boston, you settle who committed the murder. The property disposed of to the Boston pawn-brokers, and the half shawl at the Adams House, was confessedly that of Mrs. Freeze. All the parties who received this property in Boston testify, with more or less positiveness, that Phair was the man. When attention was called to the fact of the murder in a few days, and before the means of identification had passed out of their minds, and if they even could identify a man with whom they had dealings, the circumstances were such as to render their identification reliable. They all testify, with more or less positiveness, that that man was Phair. There is always more or less doubt when a fact depends upon human recollection. There is always liability of mistakes when there is but one man's unaided recollection; but when several persons concur, who have seen the same man at different times, and under different circumstances, this concurrence strengthens the convictions that they are right, and removes doubt; when there is also the hand-writing on the pawn-ticket, where the name of E. F. Smith is signed, and the same name on the hotel register, and the same name written by Phair, we have these names written under different circumstances, with different objects in view, so far as the writer was concerned. Comparing these names, so written, no man of intelligence could come to any other conclusion than that they were written by the same hand. When we find such a similarity in these names, written without any reference to each other, no conclusion can be reached but what they were written by the same person. The name on the register and the name written by Phair in jail, and supplement that by the testimony of the person who testified to seeing him and receiving of him the property, we have the fact established that Phair was the man who disposed of this property in Boston as nearly demonstrated as a demonstration can be made by a combination of circumstances and human testimony.

That Phair went to Boston on the 4 o'clock train is conceded. He claims he did not stop in Boston. If Phair went right through to Providence and did not stay all night in Boston, he was not the man who disposed of this property and registered at the Adams House. What is there to show that he went to Providence? There is evidence tending to show that he went to one depot from the other in Boston. There is no evidence from any person who testifies to seeing Phair from the time he was left by the Stewarts at the Providence depot until he was seen on the train on the 10th of June, coming this way, unless he was the E. F. Smith who stayed at the Adams House. His counsel have been wholly unable to find any man in Providence who has any recollection of him. Nothing is shown but what Phair had been in Providence before. At that time he had a sister living there. He did not go to see her this time, but no one testifies that he told them he was there soon after the war. There is a soldiers' monument standing, which is the most prominent object of the locality where he says he stopped. It stood where he would have seen it if he was there. How natural for him to have described the locality by this most prominent object in it. Now, if Phair was there soon after the war, and was at that very place, and spent the night in that room, and saw the dog with the collar, and other things which he says he saw, he would have given the description he now gives and would have omitted all mention of the soldiers' monument that was there in 1874, but was not there then. His description, omitting that, goes to show that he was describing it as it was before, and shows that he was there years before. His description of what he did and where he went in Providence had but little weight as bearing upon his being in Boston and disposing of these things.

The testimony most relied on, and which has done the most to bring the case here, is that of Downing. It seems to us that it is important that he should be able to testify to something that would be of use to Phair before we should grant a new trial on the testimony. He has not sworn that Phair was the man he saw on the cars, and we see no reason to suppose he would swear to that as a fact. All we have, then, are these indefinite recollections of Downing. There is nothing in the form of evidence, in this transaction, that changes the face of what was before the jury before.

Admitting all to be admissible we cannot tell what effect it might have on a jury. All we are called upon to do is to take the whole case as it now stands, and say what, in our judgment, a jury ought to say. As to the guilt of Phair we have no right to grant a new trial, unless this new evidence, in connection with the evidence in before, would, to our minds, cause a reasonable doubt that Phair is guilty. If it is not sufficient to raise such a reasonable doubt we cannot grant a new trial. As to the evidence of his being in Brandon on the 8th of June, we can only say that he might have been in Brandon as the evidence tends to show, come down on the night train and gone to Boston on the 4 o'clock train, and still have committed the murder. Taking the testimony before the jury before, and all before us now, we are constrained to say, as reasonable men, that no evidence furnishing a reasonable doubt of the guilt of the respondent can be found.

Judge Barrett, at the request of the Chief Justice, then made a careful view of the case and discussed some points not mentioned by the Chief Justice.

THE PROCEEDINGS FOR AN INJUNCTION. — On the 26th of March, 1879, a hearing was had before Chancellor Redfield, at Montpelier, on an application to enjoin the sheriff from executing Phair. The governor had the power to “grant reprieves” under the constitution, and no reference was made to this power in the statutes. The warrant was as follows:—

STATE OF VERMONT,  
RUTLAND COUNTY SUPREME COURT,  
JANUARY TERM, 1877.

STATE vs. JOHN P. PHAIR.

*To Surrey W. Stimson, Esq., Sheriff of Windsor County, in the State of Vermont:—*

Whereas, J. P. Phair, of Rutland, in the County of Rutland aforesaid, by the consideration of the honorable the Supreme Court, holden at Rutland, within and for the County of Rutland, on the first Thursday after the fourth Tuesday in January, being the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and seventy-five, was convicted of the crime of murder in the first degree, and has been sentenced by said Court in the words following, that is to say: “That the said John P. Phair be hanged by the neck until dead; that this sentence be executed on the first Friday in April, Anno Domini one thousand eight hundred and seventy-seven, between the hours of one o'clock and four, in the afternoon of said day, under a warrant for that purpose to be hereafter issued by this Court as required by statute; that in the meantime said John P. Phair be confined in the State Prison at Windsor, in the County of Windsor, in the State of Vermont, for a period of two years from this fourth day of February A.D. 1875, and until said sentence of death is executed; that during the first twenty months of said period of term of confinement said John P. Phair be confined to hard labor in said prison and for the remainder of said term preceding said time of execution in solitary confinement in said prison.”

Now, therefore, by the authority of the State of Vermont, you are hereby commanded that upon the first Friday of April, being the sixth day of April, Anno Domini one thousand eight hundred and seventy-seven, between the hours of one and four o'clock on the afternoon of said day, within the walls of the State Prison at Windsor, in the County of Windsor, State of Vermont, within the enclosed yard of said State Prison, agreeably to the provisions of the statute laws of the State of Vermont, you will cause execution of said sentence of said Court in all respects to be done and performed upon the body of him the said John P. Phair, for which this shall be your sufficient warrant. Given under my hand, pursuant to the order, and under the seal, of said Supreme Court, at Rutland, in the County of Rutland, aforesaid, this sixth day of February, Anno Domini one thousand eight hundred and seventy-seven.

HENRY H. SMITH,

*Clerk of the Supreme Court.*

The sentence is set forth in the warrant. The “statute law” provided that “the sheriff shall, at the time named in the warrant, commit the execution, unless the sentence shall previously have been commuted by the Legislature.”

The Bill in Equity, which was very carefully prepared by C. B. Eddy, Esq., set forth the sentence, the warrant, and the reprieves (which have heretofore been published), and prayed that the sheriff be enjoined from executing the orator on the 4th of April, 1879. Col. W. G. Veazey, Samuel W. McCall, and James C. Barrett appeared for the orator.

## MR. BARRETT'S ARGUMENT.

Mr. Barrett read the bill and made the following argument:—

*First.*—As to a Bill in Chancery for an injunction being a proper remedy: There can be nothing to the objection which has been suggested, that Chancery has no jurisdiction of Criminal Law. This proceeding has nothing whatever to do with Criminal Law. Here is a man in confinement from which he cannot escape—whether rightful confinement or not does not effect the question; claiming that another, without lawful authority, is threatening to take advantage of that confinement, to inflict a civil tort upon his person—a trespass of the most direful kind, an irreparable injury to him. He has no other remedy to avert that injury. Here is a right of the highest nature—the right of life. The unlawful deprivation of that right is threatened. If there is no other remedy, this remedy is clearly, undeniably, proper and necessary. It is the very spirit and function of equity to grant such remedies, in order to protect such rights. It must be so.

*Secondly.*—The question is suggested whether the terms of the papers claimed to be reprieves are such as to constitute them reprieves. The word reprieve does not appear in any form in either of them.

*Thirdly.*—As to the validity of the warrant under which the injury is threatened. Is the old warrant dead? The *sentence* is for an execution “*under a warrant for that purpose to be hereafter issued . . . as required by Statute.*”

That *warrant*, when so issued, was for an execution “*agreeably to the provisions of the Statute Laws of the State of Vermont.*”

Accordingly, the sheriff, at the very utmost, is, by virtue of that warrant, at liberty to look only into the “*Statute Laws*” to ascertain his authority. But there is nothing whatever in the statutes about reprieve, or about a death-warrant being valid for a different day from that named therein. The power of reprieve is conferred by the Constitution. But there is nothing even in the Constitution about the effect of a reprieve to keep a warrant alive.

The Statute prescribes a warrant absolutely inflexible in point of time. And the warrant in question is, by its own terms, inflexible in point of time. It authorizes the execution on one fixed day, and on no other; and neither the Statute, nor even the Constitution, gives it effect on any other day. The day of its death was unconditionally and irrevocably nominated by the power that gave it life. That day has passed, and there is no provision to resuscitate it.

It is of no force to say that the end practically to be accomplished in this matter of execution of men convicted of murder would be most easily and conveniently accomplished by having a flexible warrant, or by construing this to be such. The *fact* is against it. For the warrant, by its terms is not so, and there is nothing outside of itself to make it so.

Neither is the idea that a convict would be left on the expiration of the reprieve, subject to the consequences of his conviction, of any force in favor of the old warrant as a sufficient authority for

the execution of the death penalty upon him, on any other day than that named in that warrant. This proceeding is not at all directed to the proposition that one convicted of murder and reprieved would not be subject, by proper methods, to the consequences of his conviction, but merely to the proposition that, notwithstanding he might be lawfully executed upon some other warrant, yet upon the old one he cannot be, for the day, and the only day upon which it authorized, execution has passed. It now has nothing to apply to.

The idea of a reprieve contains no implication of a continuance or revival of an old warrant, imparting to the warrant an operation outside of its own terms, and outside of the terms of the "Statute Law" to which it refers. The reprieve itself simply suspends the execution of the death-penalty. But as it causes the warrant to go unexecuted on the only day named therein, the warrant expires by force of its own limitation. When the reprieve expires, then the penalty may be inflicted if another proper and sufficient warrant be obtained. A reprieve can not supply its place, or have the same effect.

In some States the governor can reprieve, and also issue a warrant or order for execution. In Vermont the governor can reprieve only. His reprieve leaves the case in the same situation, so far as the warrant is concerned, as if no warrants had ever been issued. If the Courts allow the governor to issue a new warrant or order, or (what is the same thing, requiring equal power) revive an old one which is entirely dead by its own terms, it is, by the judicial insertion of that provision into the Constitution itself, not by judicial legislation merely, but by constitution-making. The provision in the Constitution stands absolutely naked as the "*power to grant reprieves.*" Anything further must be by sheer judicial addition.

Upon the reprieve, the sheriff should have returned the old warrant to the Court issuing it, with his return indorsed, showing the cause of not executing it.

Even an ordinary execution to be levied upon property, if the levy be enjoined and the injunction not dissolved until the time limited in the execution has expired, is not revived upon the dissolution of the injunction, but a new execution is necessary.

Independently of any claim that a reprieve continues or revives the old warrant, it cannot be claimed that time is not of the essence of the warrant. The law would not tolerate that the sheriff should either take a man's life before the day set, or give him longer life than the law gave him. The former would be murder, and the latter cause for impeachment. It would be intolerable and unconscionable to leave the time of execution as a matter merely directory and not mandatory, and subject to the possible caprice of the sheriff.

The Statute which provides for the warrant undertakes to provide for one contingency affecting a warrant, namely, commutation. The omission of the Legislature to provide for another contingency upon precisely the same subject-matter, is conclusive, under the rules of judicial construction, that the omission was intended. It cannot be supplied by the Courts. And even the pro-

vision for the contingency mentioned in the Statute furnishes no analogy from which to claim that the Legislature, in any case, provided for or contemplated the continued or revived force of an old warrant after the day named therein. There is not a word there, or elsewhere in the Statutes, or even in the Constitution, about the continued or revived force of such warrant. Accordingly, there being no statutory or constitutional provision for such operation of the old warrant, the common law, under the familiar rule touching its adoption by us, must be resorted to for authority. The cases to be cited are to the effect that, by the common law, the old warrant would be insufficient. We claim, therefore, that the old warrant in this case is insufficient. It is dead by default of life in itself and of any power outside of itself to give it life beyond what it has of itself.

The authority for all proceedings *in invitum* must be construed with the utmost strictness.

#### MR. McCALL'S ARGUMENT.

Mr. McCall then addressed the Court and reviewed the evidence in the following manner:—

The simple question at issue here is, has the the sheriff of Windsor County any sufficient legal authority to execute John P. Phair on the 4th of April next? The law protects Phair's life equally with that of any citizen, until taken in accordance with its decrees and forms. It would be murder for any one deliberately to kill Phair, although he may be under sentence of death, unless by virtue of a clear warrant of law. (East & Hawkins's Pleas of the Crown.) The sheriff's warrant and the statutes which govern his conduct should be construed strictly, 1st, because they are what the law terms odious (Bishop on statutory crimes, Chief Justice Marshall in 5 Wheaton, 76); 2d, because the act to be performed is in derogation of common right; 3d, because these statutes and warrants are penal. The rule which requires strict construction of penal statutes depends on a reasonable expectation that when the Legislature intends so grave a matter as the infliction of suffering or an encroachment upon natural liberty or right, or the grant of exceptionable powers, it will not leave its intention to be gathered by mere doubtful inference, or convey it in dark or cloudy words, but will express it plainly and explicitly. A suspicious scrutiny of words, or those hostile conclusions from ambiguity or from what is left unexpressed, are not justified. (Maxwell on Stat. Interpretation, 334.) The grant of a power to take the life of a man is a most exceptional power, since it is a grant to commit that which, without it, would be the highest crime known to the law. For any one or all of these three reasons, therefore, the alleged right of the sheriff to execute Phair should be most strictly scrutinized.

The warrant sets forth the fact that Phair was sentenced to be executed on the 6th of April, 1877, "under a warrant for that purpose to be hereafter issued by this Court, as required by statute." It will be material to the discussion hereafter to remember,

that under this part of the sentence the execution cannot be committed by virtue of any reprieve. The warrant then commands the sheriff to execute, according to the "statute law," on the 6th of April, 1877. The expression "statute law" does not leave to the sheriff the liberty to ransack the laws of England or even the Constitution of his State. It is the expression of the law-declaring power, which is presumed to use legal words according to their proper meaning, and it certainly does not rest with the sheriff, a mere servant of the Court, to impute to his master any ignorance, or to revise its decrees. Now, nothing is said in the "statute law" concerning reprieve, but the whole injunction as to time is, that the sheriff shall commit the execution at the time named in the warrant, unless the sentence shall previously have been commuted. Obviously, then, according to the sentence, the warrant, and the "statute law," his right is only to execute on the 6th of April, 1877. But, granting to the sheriff the right to go beyond the warrant and statutes to the Constitution, and to all other laws, he can find no authority for executing. The Constitution confers upon the governor the power of reprieve. It is a rule of law that statutes are to be construed with Constitutions. But it is an equally well settled rule that construction of a statute with a Constitution, is not to be permitted so as to give the statute a meaning outside of its terms. The statute in question is clear, and only in cases of ambiguity are even Courts granted the right to impose a forced construction, and seek for the intention of the Legislature outside of the words of the statute. No principle is more firmly established than the rule which declares, when a statute is unambiguous, that the Legislature shall be intended to mean just what it has plainly expressed. In a recent case it was held that where the intent is ambiguous, and the effort to arrive at it is hopeless, and in those cases only does the power of construing a statute strictly or literally exist. The intent of the Legislature, according to these rules, is clear. No provision whatever has been made for the execution of a man who has been reprieved, and it is to be inferred that no such provision was intended. In addition to this, it will be seen that the Legislature has expressed one contingency, viz., commutation, and this is the only other contingency than reprieve that could occur and leave the convict within the sheriff's reach. Had neither commutation nor reprieve been mentioned in the statute, there might then exist some ground for grafting the constitutional provisions upon it, although then the statute would be inconsistent with the sentence. But commutation is mentioned. *Expressio unius est exclusio alterius*. The fact that the Legislature has expressed the provision in regard to commutation excludes the presumption that it meant the power of reprieve to be implied. But granting that the statute is defective, it is not competent for a court, much less for a sheriff to supply a *casus omissus*, or defect. It was then held at length that the words of the statute should be construed strictly, and that the degree of strictness depends upon the severity of the penalty. The construction should be *strictissimi juris* in favor of life.

In view, therefore, of the direction of the best authorities, it

would be holding a most extreme doctrine to say that the words of this statute are simply directory, and that the sheriff may disregard them. Time is held to be a material part of the judgment in a sentence of death, and that the sheriff commits homicide if he vary from the judgment in committing execution. (Hawkins' Pleas, and Foster, 107.) There could be no authority found among all the cases of usurpation of legislative powers by Courts that would sustain the claim that, where time is so much of the essence of the act, where the transaction is of so grave a nature, where the wording of the court's mandate is so explicit, the words of a statute and warrant in such a case are not to be construed strictly. There now exists in the sheriff, therefore, no authority by virtue of the warrant or of the sentence of the Court or of the statute laws of the State. The execution of sentence was delayed by the reprieve, but the warrant was not, and from its nature could not be. The sheriff cannot execute by virtue of the reprieve, first, because such an execution would not be in pursuance of the sentence; second, because the governor has not the power to issue a warrant, and his delay of execution beyond the time named in the warrant throws the convict into the hands of the Court; third, because a law of 1878 applicable to this case was enacted, providing for the issuance of an order or warrant of execution. No such warrant has been issued; fourth, because the common law rule is, that in cases of reprieve the convict should be again called into court to show cause why execution should not take place; fifth, because the reprieve simply commands the sheriff to "delay execution until the 4th of April, 1877." At the expiration of that time the sheriff is thrown back upon his legal rights. The reprieve confers no new powers. It is an accident so far as the sheriff is concerned. He may look on and wonder at this, to him, supernatural intervention; but when he comes to act he must remember that his authority is bounded by the sentence, the warrant, and the "statute law." Equity can properly take cognizance of this case. There is no adequate remedy at law. It is not to prevent a crime as a crime, but to prevent it as a tort. Equity will grant relief against an impending trespass upon a civil right where the damage would be irreparable. It cannot be claimed that the magnitude of the tort would take the case out of the remedy, but on the other hand would more loudly call out for the remedy. Phair has a right to protect his life from all violence not legal, and the simple question at issue here is, would the Sheriff in executing Phair commit a tort as well as a crime, and is that tort irreparable? If so, all the fundamental and humane principles of equity sanction this remedy. If the man must be hung, let it be by virtue of a clear and unquestionable warrant of law and under no ambiguous or contradictory or implied processes that may require the authorities of the State to commit a crime in order to punish a crime.

Chancellor Redfield reserved his decision until the 28th of March, when he dismissed the bill without giving any extended opinion.

## APPENDIX.

On Thursday, April 3d, Governor Proctor granted to Phair a further reprieve of six days upon an application by Phair's counsel based upon an affidavit of M. D. Downing. The reprieve was granted to enable the convict to have this affidavit passed upon by the court. Accordingly, on the evening of April 8th, a hearing was begun at St. Johnsbury, before Judges Ross and Powers, for leave to file a petition for a new trial and for a stay of execution. The State was represented by Hon. E. J. Ormsbee and State's Attorney Lawrence; and Hon. C. B. Eddy, Hon. D. E. Nicholson, S. W. McCall, Esq., and James C. Barrett, Esq., appeared for Phair.

*The affidavit of Downing* was to the effect that he went to Windsor on the 2d day of April and saw John P. Phair; that, after conversing with him, he became convinced that Phair was the man whom he met on the train coming from Providence to Boston on the 10th day of June, 1874; that he identified Phair not only by his personal appearance but also by questions and answers as to the part of the car they sat in, the manner in which Downing then wore his whiskers, etc.; that Phair had whiskers and moustache as when he [Downing] saw him on the Providence train; that Phair answered correctly all questions, and in appearance was but slightly changed; that he could not help recognizing him, and was certain Phair was the man he met that time. Affidavits were also presented of the following:—

*Solon Burroughs* had expended considerable time and money on detective work as to the whereabouts of Aurelia Brooks, after the murder of Mrs. Freeze; had been unable to trace said Brooks in the State of Vermont, with but two exceptions, since June, 1874; once, she was seen at Vergennes for a very short time, and again was at Burlington to get clothes of hers which her mother had; when the clothes, which had been bloody and were washed by Mrs. MacLaughlin, were presented to her, she said, "I don't want; I shan't touch."

*Conductor Putney*, of the Cheshire R.R., testified that the Buffalo Bill Opera Troupe came on the train from Rutland on which Phair arrived.

*One Hardy*, of Keene, swore that James G. Pierce was a professional gambler; that he was known as Captain Kidd, from the fact that he had once been a pirate, and that he had been in State's prison; that he had no reputation for truth and veracity, and could not be believed even under oath.

*Robert J. Loheed*, of Boston, testified that on the 6th of April, 1877, his attention was excited by the "Globe" bulletin, and that when he went to the office of his employer, M. D. Downing, about 10.30 on that morning, he called Mr. Downing's attention to the extraordinary bulletin. Downing then sent him for a "Globe," and on returning he read Phair's statement. On reading the account of the trip to Providence, Downing said, "Read that again." He did so. Downing appeared much excited; got up

and took some old memorandum-books out of a drawer, and soon after went out hurriedly; he acted as if he were insane.

The State introduced the affidavit of Superintendent Rice, of the Vermont State prison, which was to the effect that Phair and Downing were introduced to each other on the 2d of April, 1879, and that no formal test was made. Arguments for Phair were then made by Messrs. Barrett, McCall, and Nicholson, and for the State by Messrs. Ormsbee and Lawrence. The judges then withdrew, and, after a short consultation, dismissed the petition.

JUDGE ROSS, in rendering his opinion, reviewed Downing's testimony. The long lapse of time and the changed appearance of Phair rendered an identification uncertain and not strongly reliable. Then Abrams, who positively identified Phair about the time of the pawning, was unassailed.

The clerk at the Adams House saw a man write E. F. Smith on the register, and he saw Phair a month later, and was pretty positive that he was the man who wrote on the register. Then the clerk found Mrs. Freeze's half-shawl in the room occupied by the man who signed E. F. Smith. There was a similarity of the writing—the defence claim too similar; but it is just as improbable that different men wrote so much alike. Pierce's testimony was severely attacked, but the goods identified as Mrs. Freeze's and the name E. F. Smith on the pawn-ticket were in his possession.

While we would like to decide the other way, we feel that the Court would not consider the evidence sufficient for a new trial. We do not feel as though we were passing sentence, but simply as passing on new evidence.

His Honor, Judge Powers, after an exhaustive analysis of the evidence adduced on the trial concluded the opinion in substance as follows: In this petition nothing more of importance appears than on the former hearings, except that the evidence of Downing is more positive, that is, he gives the same evidence in more positive terms. We are unable to see how any fair jury could say they saw any doubt of Phair's guilt, even if all the new evidence was included.

One thing is conceded by all, viz.: That the person pawning the goods must have committed the murder. The goods were pawned by E. F. Smith, and Phair was indentified at Rutland as E. F. Smith by Boston witnesses. Abrams was positive that Phair was E. F. Smith. Donovan did not positively indentify Phair, yet the half-shawl of Mrs. Freeze was found in room 61, occupied by E. F. Smith. There is again the handwriting; it is said to be Phair's. The evidence of experts shows that Phair wrote both E. F. Smith on the Adams House register and on the pawn-ticket; also in Rutland Jail. Taking this evidence of the handwriting and the identification by the pawnbrokers, the case against Phair is, without question, conclusive to establish his guilt. Phair now presents testimony to prove an alibi.

Downing now identifies Phair as the man he met on the Providence train. Downing, without question, is honest. While the identification and the unquestioned lapse of time naturally weaken the force of the testimony, the decision is reached, after a careful review of all the evidence in the case, and, while we believe firmly in the honesty of purpose of counsel and Mr. Carrigan, we cannot

conclude other than that the evidence here presented does not warrant us in granting the petitioner's prayer; and on this ground the petition is dismissed.

Accordingly, on the 10th of April, 1879, nearly five years after the commission of the murder, Phair was executed in Windsor prison.

### THE EXECUTION.

As it was not the purpose of the author to discuss the life of Phair, or detail his history other than that found in his "dying statement," it will be sufficient in conclusion to briefly note the preparations at Windsor which terminated the convict's sad and unfortunate life. It will be remembered that on the 6th day of April, 1877, by a reprieve of his Excellency, Horace Fairbanks, Governor, Phair, while calmly awaiting the executioner's command, was snatched from the hangman within twenty-four minutes of the hour appointed for execution. Following the reprieve of April 6th for four weeks, on the 3d of May the doomed man was again granted a lease of life till April 4, 1879. On the evening of April 3d, the sheriff again informed the doomed man that a respite had been ordered for six days. Without apparent concern the convict received the glad tidings, and, thanking the official, retired for the night. The interim was passed in penning additional farewell missives, and in the more thorough revision of his last statement. When the decision of the Court of St. Johnsbury was given him, Phair telegraphed his spiritual adviser, Rev. Geo. Pratt, of St. Albans, and immediately sent for his counsel and the prison chaplain, Rev. Mr. Mick, of Windsor.

At an early hour the morning of the 10th, Phair had completed his statement and correspondence, and with his spiritual advisers passed his last hours in prayer and preparation for the scaffold. In the mean time, and while the gibbet was being erected the fourth time for Phair's execution, the prisoner's counsel were pleading before the Governor at Southerland Falls for further respite that the case might be considered for commutation by the Legislature, and thus, as was urged, save the possibility of Vermont's shedding *innocent* blood. About one o'clock a telegram was received from the Governor's Secretary, announcing that no delay of the execution would be ordered. In taking farewell of his counsel and friends, some *forty minutes* before the springing of the fatal trap, a person present, who had befriended the convict and spent time and means unsparingly in his defence, made a most earnest appeal, and begged the doomed man not to die without confessing. If he did not commit the murder he should, as a return for what had been done for him during his misfortune, give some light if possible, that the mysteries of the case might be cleared, and the truth revealed. With tremulous voice and in tears, the doomed man called on God to witness that he spoke truthfully.

In concluding his protestations of innocence, the prisoner detailed in substance what he stated on the 6th of April, 1877, a few minutes before the hour appointed for execution, which was as follows: — "I know my life has not been what it should have been; but, notwithstanding my misgivings, God knows I am innocent and

I never harmed anybody. I could tell much more than will appear in my statement. There are those who know this too well. They know I was comparatively a stranger to this woman, yet she told me about her visitors, and how they gave her what she called "hush money" and "social presents." They know she wanted me for a confidant. That I could have had all her property by merely asking for it. They know I had no motive to commit this crime. I don't care to expose names for useless publication. I have no desire to disgrace their families. As it may assist my friends in discovering the guilty ones, I will leave the names. (Here names of persons residing in Rutland and vicinity were given.) Some of them fear another trial. It would expose their infidelity and crime. The State gave me \$20 for my defence. Poverty and perjury convicted me. I appreciate my helpless condition. I am well prepared. It is a fearful death, but in my innocence I shall die happy.

Four times I have been notified to prepare for execution; this I am convinced is the last. I have given up all hope; I have suffered the *past two years more than death*; my sufferings will soon be over; I shall then be happy; I hope God will forgive my enemies; they are guilty of murder; I die a *man* not a *murderer*; I shall try to meet it bravely; and I know I shall have support till the last. The State is bound to have me hung; I hope my execution will be the last; many, I have no doubt, think me guilty; in the sight of Heaven I am *innocent*; I freely forgive all who have injured me. If I was guilty, those who know me best, know I would have confessed long ago. You have done all in your power to save me—I am sorry I cannot return what you and my counsel have done. If I knew anything, I would tell you. Aurelia Brooks may be guilty. I do not know it. Some day my innocence will be as clearly known to man as to God, in whose presence I am soon to stand."

Dressed in black, at a few minutes before two o'clock, the solemn procession moved from the prison cell to the scaffold, when the doomed man passed through the ordeal without bravado, but with firmness and Christian-like fortitude.

When standing on the drop and asked if he had anything to say, he said, "I am sorry to die, but not so sorry as if I had committed the crime for which I am to die; what more I have to say is contained in this statement which I leave in the hands of my counsel." He then handed the manuscript to the sheriff, and at 2.11, while repeating the words, "Lord, remember me," the trap fell, and in eleven minutes the life of John P. Phair was extinct.

The remains enclosed in a casket, with flowers contributed by the prison-guards, were conveyed to his mother in Vergennes, Vermont, where, on the following Saturday they were interred in the family ground.

#### CONCLUSION.

The following, which is the last statement of John P. Phair, was given for publication to the Boston Journal, in whose columns it appeared exclusively on the 14th of April, four days after the execution.

## THE LAST STATEMENT.

In view of my rapidly approaching death, I deem it my duty to make the following supplement to my anticipated last statement, which was published in the "Boston Daily Globe" on the morning of April 6, 1877, the day on which I was to have been executed for the murder of a poor disreputable woman whom, God knows, I have never harmed by either word or deed. What has transpired since the publication of that statement — the truth of which I have lived to see corroborated, almost in full, by reputable witnesses — is well known to the world.

Two years ago I was compelled to undergo the same painful ordeal through which I am now patiently passing, excepting the last act in the drama which was to rob me of my life. My solemn protestations of innocence had been given to the world on the morning of the day fixed for my execution, and at noon all further hope of life was dismissed from my mind. But, as it is well known to all a just and merciful God had willed otherwise, and at the last moment rescued me from the jaws of an unjust and ignominious death by unearthing evidence which was legally mine, and could have been presented to the jury at the time of my trial, if I had only had the means to use in looking it up. Gov. Fairbanks — God bless him for his humane act! — reprieved me from the 6th day of April, 1877, until the 4th day of May, during which time an official investigation disclosed sufficient evidence in my behalf to warrant a second reprieve, which was granted until April 4, 1879, in order that my evidence, and that claimed by the prosecution against me, might be reviewed by the Legislature of 1878. In October last my claims were presented to that body of law-makers by able, earnest counsel, and on the petition of more than 15,000 people praying that a new trial might be granted me. The assembly at first seemed to feel the importance and justness of my claims, but still staggered under the thought of establishing a precedent by granting me a new trial outright, whether innocent or guilty.

Finally a law was passed which opened the doors of the Court. On the 17th of January, 1879, my counsel presented my petition to Judges Royce and Redfield, who decided that I had made out a *prima facie* case, and forthwith granted me leave to petition the same court, and the same members of said court, excepting one, who had denied my former application for a new trial. This court heard my petition and evidence, together with the so-called State's evidence against me, at Rutland, on the 3d day of last February.

The Court were most liberal in admitting evidence offered by my counsel, and, as I am informed, gave the application a patient consideration. I do not impute to any member of the Court a determination, or even a desire, to wrong me. I have feared there may have been a prejudice against me in the minds of some members of the bench, owing to my wrong-doing in my earlier life, and to the malicious publications of all manner of false accusations against me. I feared, and now believe, these things operated against me, and robbed me of the opportunity to secure such a result as I think as a condemned man I was entitled to.

In praying the Court to set aside the verdict reached by the jury on my trial, — which was forced upon me under exceeding adverse

circumstances, — and grant me a new trial, I did not do so with a consciousness of guilt, but as an innocent man, who felt that he had by the laws of civilization an undeniable right to a trial by jury on evidence which he not only feels assured, but thousands upon thousands of others believe, would to-day acquit and exonerate him before any unbiased court and jury in this country. I did not think that the Commonwealth of Vermont could be moved to the blood-thirsty attitude she has taken against one of her subjects by the perjured representations of scheming reward-seekers and so-called detectives. As murder by false testimony is the most aggravated species of murder, it cannot be justified in either heaven or earth; and that I am a helpless victim of such God bears me witness, and will ever hold my persecutors strictly accountable to Him for the great wrong they have done me, and against which, incarcerated in prison as I have been, and afflicted with poverty, I have not been able to successfully contend. Wherever I found a friend among journalists, the bitterness of my enemies led them to stigmatize such as “Boston Bohemians,” because they conscientiously questioned the integrity of the disreputable band of pawnbrokers, and the honesty of the two scheming reward-hunters, the self-appointed, so-called detectives, who, with the purse of the State at their command, were able to crush my hopes and ruin my chances for an impartial trial, and my chances for such relief from my fate as I sought and thousands believed me entitled to.

This is the reason why I could have no new trial, but must hang in order to make it appear to the world that it is impossible for a Vermont jury to convict an innocent man, and much more so for a poor condemned man to have been by bitter prejudice deprived of the benefit of the reasonable doubt which the law gave him in his fearful situation. My extreme poverty was well known to the Court. The law only allowed the State to award me \$20 to make my defence, while nearly \$5,000 was most freely yielded to secure my conviction, and upon evidence most cruelly false. My claims were ably and faithfully presented by my counsel, who charitably gave their services in my defence. The result is the false evidence has been honored, and I must submit to the forfeiture of my life.

In offering his opinion, the Chief Justice laid great stress on the fact of my not taking the witness-stand and testifying in my own behalf, which was no fault of mine, but an error on the part of my counsel, who forbid my doing as I had intended. He further said that, “admitting all that is claimed, the question for the Court to decide is, not what a jury might say as to the evidence before us, but what, in our judgment, they ought to say.”

But I don't believe that any unbiased jury in this country would render such a verdict on the evidence which was presented to the Court. The Court was informed by the prosecuting attorneys that if a new trial was granted me I never could be convicted. They were right about that, and had the Court been interested enough to ask them the reason why I could not be convicted, they would have urged, as a last plea, their inability to get the unsound evidence which convicted me repeated on a second trial, which is true enough. In denying my application for a new trial in February, 1875, the Court rendered an opinion that if the newly discovered

evidence which was presented with my petition *had been given to the jury* on my trial, it would not, in the Court's opinion, have changed the verdict. The Court's opinion on the second and last application was, that, "admitting all that is claimed, the question for the Court to decide was not what a jury might say as to the evidence before them, but what in their judgement they ought to say." It would seem, then, by this, that the Court has a right, perhaps in case of emergency only, to act as both judge and jury, in the very face of a law which guarantees to every person accused of crime a right to a fair and impartial trial by a jury composed of twelve men. Now, if this is correct, the question in my mind is whether or not I have been legally denied a new trial.

To me the feeling is irresistible, that in the court I have found no protector. I have from the first believed, and now more than ever believe, that the so-called detectives, Thornton and Stearns, have in their possession evidence, which would go far toward proving my innocence if not wholly exonerate me before the Courts and the world. The fact that they suppressed important evidence in my behalf relative to my trip to Providence, on my trial, makes this belief irresistibly strong. The affidavit of Stearns, which was presented to the Supreme Court at the recent hearing of my petition and new evidence at Rutland, purporting to be an admission made by me to him while under arrest at Rutland, nearly five years ago — that I was in Providence shortly after, or about the close of the late war, was the most bare-faced perjury conceivable, and fairly crowned all his former perjury in the case. I had never been in the city of Providence previous to the afternoon, or evening of June 9, 1874, and no other person in the world save Stearns can be found who would testify that I had ever made such an admission to him or her in my life. The object of that false affidavit was evidently to depreciate the honest corroborative testimony of Mr. M. D. Downing, whom I met and conversed with on the cars between Providence and Boston in the forenoon of June 10, 1874.

In conclusion, I cannot help regretting, more than I can express, the tragical termination of this sad affair which has so long agitated the public mind, and brought needless suffering and sorrow upon my relatives, friends, and myself; and could I have at any time felt or known that any act of mine was directly or indirectly the cause of bringing about so ignoble a result, I am sure that I would long since ceased to exist from the effects of an overwhelming remorse of conscience. But innocent as I am, I could do no other than manfully stand up and repel the base assaults of my persecutors with such weapons as the Almighty saw fit to place within my reach; and in doing so I have acted from a sense of duty to God, who gave me life to enjoy in common with my fellow-men so long as I obeyed his sixth commandment, the violation of which would alone forfeit my right of life under both human and divine law. When my claims were presented to the Legislature, my enemies again accused me of an attempt to secure a commutation of my sentence to imprisonment for life, which was false. I did not appeal to that honorable body for either a commutation of sentence, sympathy, or mercy, but for strict justice; and these were my express instructions to my counsel at the time. If they asked for

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more, they were probably led to do so by the temper of the Assembly, which had, in a great degree, become sullen over the persistent efforts of friends who were endeavoring to get the sentence of every condemned man in the State prison commuted to imprisonment for life.

Before closing, I wish to acknowledge my sincere gratitude to all persons who have, by either word or deed, done what they could toward securing me a new trial and justice. These friends are so numerous that time and space forbid my mentioning in this article only those who have taken the most prominent parts in my defence. Among them, my heartfelt thanks are especially due to Hon. D. E. Nicholson, Col. W. G. Veazey, and James C. Barrett, Esq., of Rutland; Hon. C. B. Eddy, of Bellow's Falls, and S. W. McCall, Esq., of Boston, my counsel; Col. Charles H. Taylor, and M. P. Curran, Esq., of the Boston "Globe," and Mr. E. C. Carrigan, formerly a representative of the "Globe," but now of the Boston Journal.

Mr. Carrigan has, from the time of my first reprieve, proven himself an earnest advocate of my cause as well as a warm and faithful friend. An own brother could have been no more earnest than he has been in all legal efforts to secure me justice. His failure in this in no way lessens my great obligation to him, and I feel that no lover of the cause of justice and humanity can help respecting the honorable and fearless position, from the first, taken by him and faithfully sustained until the last. My thanks are also due to the humane Prison Directors, Superintendent, and their subordinate officers of 1877 and '78, for kindness received at their hands at all times during their administration under Gov. Fairbanks. I feel that I have faithfully discharged my highest duty to God and my fellow-man under all the circumstances which have attended my painful misfortune, and therefore am in no way responsible to my Maker for the loss of my life. I have at last spoken plainly, because the occasion and truth demand that I should. I have always said, and will finally say, that I never harmed the unfortunate Anna E. Freeze, of whose death I am unjustly accused, by either word or deed, in her lifetime. Neither have I appropriated to myself, or for any person whomsoever, one pin's worth of property, jewels, or any article whatsoever belonging to the poor woman. I have, in common with other young — as well as some old — men, made mistakes in life for which I sought and obtained forgiveness at the time. But, thanks be to God, the mistake of taking a human life, or ever attempting such a thing, is not among them, as my final Judge can attest. No man could have been more wrongfully accused in this respect than I have been by a certain ring who were bent on my destruction, *right or wrong*, and they have succeeded, but by what means the Supreme Judge of all shall decide. In the mean time I freely forgive all my enemies — yes, even the very worst of them; and if I have ever wronged any person in my lifetime, whose forgiveness I have not already asked and obtained, I now ask it in all sincerity. All hopes of human justice are exhausted, and death is inevitable.

(Signed)

JOHN P. PHAIR.

WINDSOR PRISON, April 10, 1879.



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