

THE TRIAL

OF

JAMES P. DONNELLY,

FOR THE

MURDER OF ALBERT S. MOSES,

ON THE FIRST OF AUGUST, 1857, AT THE "SEA VIEW HOUSE,"
NAVISINK, NEW JERSEY.

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MONMOUTH COURT OF OYER AND TERMINER.

SEPTEMBER TERM, 1857.

PETER VREDENBURGH, JUDGE.

THOMAS THROCKMORTON, }
WILLIAM P. FORMAN, } ASSOCIATE JUDGES.
ANANIAH GIFFORD, }

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FOR THE MURDER OF ALBERT S. MOSES.

TUESDAY, SEPT. 15th, 10 O'CLOCK A. M.—The general panel and officers were called. During the calling the father and sisters of the Prisoner entered the Court-room, and took their seats within the bar. They were weeping at the time, evidently painfully alive to the danger in which a member of their family was involved.

Joel Parker, Esq., the Prosecutor, moved the case against James P. Donnelly, indicted for the murder of Albert S. Moses, at the Sea View House, on Saturday the first day of August 1857.

The Prisoner was then commanded to be brought up. He appeared in a few moments, and entered the Court-room with a pleasant countenance, saluting his sisters affectionately with a kiss, and glancing around.

The Prisoner is a young man, of medium size and fine personal appearance, and has the bearing and polished manners of a gentleman.

From the General Panel the following Jury was selected and duly qualified.

John Vanderveer, Obadiah Applegate, James Croxson, William Lefferson, James A. Herbert, Jacob S. Rue, Benjamin Pullen, James L. Algor, Abram H. Morris, James Thompson, Gilbert Schenck, Jonathan C. Croxson.

The Counsel for the State are Joel Parker and Hon. Wm. L. Dayton; for the Prisoner, A. C. McLean, and Joseph Bradley, Esq's., and Ex-Gov. Pennington.

The Court was not occupied over an hour

in impanneling the Jury. There were twenty-one challenges. After the Jury had been impaneled, the Prosecuting Attorney, Mr. Parker, addressed them as follows:

The indictment just read, charges that on the first day of August last, the defendant, James P. Donnelly, murdered Albert S. Moses, at a place within the jurisdiction of this Court, and it is for you, under the obligation of an oath to inquire, determine, and by your verdict say, whether that charge is sustained by evidence. This is indeed a solemn duty—this is an important trust.

Approach its performance, therefore, gentlemen, with every unwarranted sympathy excluded, with every feeling of prejudice entirely eradicated from the mind. At the very threshold of this investigation the thoughts of each one should be turned within, to ascertain that the mind be perfectly free and open to receive the impress of truth. It is truth, and truth alone, we seek.

The prisoner at the bar is a stranger. He has probably never before looked upon the face of a single one of you who now have in keeping his life. I know that with you this will not prejudice his case. God forbid that the State should ask a Monmouth County Jury to disregard the stranger's rights.—But while the stranger is entitled to the protection of our laws it must also be remembered that he is equally with ourselves subject to the penalty of their violation, whatever that penalty may be. It is my province, gentlemen, in opening the case, to state as briefly as possible, and in general terms, the substance of the facts we expect to prove.

We shall produce evidence bearing upon the motive. Although it is not necessary to discover the motive when the crime is proved, yet the motive when discovered often sheds a flood of light upon the whole transaction. We will prove that on Wednesday, the 27th day of July, a gentleman deposited with the defendant, who was bookkeeper and clerk of the Sea View House, the sum of \$100 until he should return from New York on Saturday, the 1st of August; that instead of keeping this money in the safe, defendant had it upon his person, used it, lost more than half of it in gaming with Moses on Friday night, and that Saturday morning, the 1st of August, found Donnelly a defaulter, an embezzler, a ruined man, unless the money be forthcoming when the owner arrived. The telegraph was at hand—

his discharge from employment and the reason thereof would in a moment flash along the wire—the press of the Empire City would transmit the news of his disgrace to every point of a widely-extended acquaintance, to every one united to him by the ties of friendship or of blood. The choice was between the certainty of exposure of a lesser crime, and the chance of not being discovered in the commission of a greater, and that choice was to be made quickly.

Between the hours of 5 and 6 on the morning of the 1st of August last the inmates of the Sea View House, at the Highlands, in this county, were aroused by the fearful cry of murder. A man in his night clothes, covered with blood, was seen in one of the halls as if in pursuit of some one who had escaped reeling for a short time from exhaustion, and then hastening to reach his bed, which proved a bed of death. The proprietor of the house was soon at his side; he found Albert S. Moses weltering in his blood, with a ghastly and fatal wound upon his neck of which he shortly died. No weapon could be found. The wound was of such a nature and in such a position as to forbid the supposition that it was self-inflicted. The fatal stab had been given by the hand of another, and that recently, for the current of life was still flowing out with fearful rapidity.—The murderer had just left. The footprints of his crime were fresh. Where had he fled? Guilt drives the assassin from his victim, gives fleetness to the step, terror to the countenance, trembling to the limbs, unnerves the whole man. Conscience makes cowards of us all.

Guided by this index of crime, you would reasonably expect the State to present before you evidence that immediately after the murder the guilty person fled from the scene of blood. This we expect to do. We shall prove to you, Gentlemen, that while the cry of murder was yet resounding through those halls, the defendant was seen in the utmost trepidation running from the house. His flight is for a moment stopped by Smith, the proprietor, who vainly endeavors to ascertain the cause of alarm. Donnelly stands before him with quivering frame. We shall then follow him in his flight from where Smith leaves him, to a building in the rear of the kitchen, where a quantity of worthless money he was known to have, is found—thence to the east of the back building, where he picks something from the ground, and scaling a fence upon the eastern boundary of the premises, we see him running down Schenck's line to a plank walk below the hill, and thence toward the river. We shall follow him, step by step, from the time Smith met him running from the house while the cry of murder was still ringing in his ears, until Martha O'Neil loses sight of him below the hill by the river side. We shall prove his conduct upon returning, his change of dress, his delay in entering the room of the dying man, his agitated appearance, his strange expression and guilty conduct before reason had time to resume her sway, and self-possession was recovered.

We shall also, gentlemen, inquire by the proof for the weapon that did the deed. It was done by a dirk, or some such instrument. We will show to you that the same person who was seen in rapid flight, as soon as the fatal blow was struck, was the owner of a weapon that would inflict the wound.—Two days before the murder Donnelly had the dirk. It was not in his possession when he returned to the house, subsequent to the murder. It has never been found nor accounted for. These are, in substance, the circumstances of the case, the proof of which we expect to produce. There are also other facts that time will not permit me to mention in detail, which, together with the declarations of the accused, point to the same conclusion. But our proof does not stop

here. Besides the evidence of circumstances we shall bring direct proof. The victim was permitted to live long enough to give the history of the deed. He saw the assassin as he left the room—he followed him into the hall—he knew him—he recognized him. Upon his dying bed he makes a deposition of his property—he declares his belief that he is about to die and appear before his God, and under these solemn circumstances, when all hope of life had gone, he names the man who cut his throat. It was the same man whom we shall prove had the motive—the man who had the weapon—the very man who, a moment after the first act of the tragedy, had been seen in flight—and almost with his dying breath, exclaimed, “Donnelly did it,” “Donnelly cut my throat,” “Donnelly, the bookkeeper, murdered me.”

I have thus, gentlemen, stated as concisely as possible, the chief points to which our proof will be directed. After the whole evidence in the case has been heard it will be for you to consider and announce the conclusion to which your minds are led. May Omniscience guide your deliberation, and bring you to a right result.

At the termination of these remarks, the witnesses on the part of the State were called and severally held to bail in the sum of \$500 for their appearance until discharged. After which the Court adjourned till three o'clock, p. m.

Three o'clock, P. M., the State proceeded to call the first witness:

George A. Moses, sworn.—I have no brother living; have had one living. Last saw him alive the 2d or 3d day of June in Richmond, Va.; I parted from him at the Railroad Depot; he went North; got a ticket for Philadelphia. He was 19 years of age on the 22d of last November; his mother was living in Philadelphia. Her name is Matilda Concklin; her letters are directed 151 Logan street, Philadelphia. [Sleeve buttons shown. Said he saw them on his brother when he was in Richmond.] Mrs. Smith gave them to me on the Thursday after the 1st of August, at the Sea View House; at that time a man by the name of Bennet took me up into some of the rooms to show me some clothes; said they were my brother's, gave them to Mr. Thompson. I found in the pocket his pocket-book and a letter from my mother to him. I have got the rest of Albert's clothes, some from Newark and some from the place where he stayed. He had been canvassing for a book.

Cross-Ex—I never saw the book. He wrote to me that he was going to canvass.

No mark on the sleeve buttons by which I know them; the name of my brother, was Albert S. Moses. My brother was a taller, stouter, larger man than myself; he had been about the United States; a good deal about the Southern States. I saw Dr. Finnell once; have not made any threats to him

as I remember; I went to see him about putting a card in the paper; I complained to him about making the post mortem examination; went to see him about putting a card in the paper, saying that my brother died with *delerium tremens*. My mother is not in Freehold.

Ex. by Pros.—I took particular notice of the buttons; I never saw any like them.

Olivera Botelle Sworn—I live in New York, 518 West 25th st; my family was at the Highlands this summer. I was at the Sea View House this summer; went there the 28th of the month of July; went back on the Friday next in the morning; left 3 children and 3 nurses there. My wife went with me; came back on Saturday; that was the next day; saw Donnelly at the Sea View. Don't know what business Donnelly was doing there. The day before I went to New York, I left \$100 with Donnelly; told Mr. Donnelly I would be back the day after; that was Saturday. The money I left was, 12 \$5 gold pieces, 2 \$10, and one twenty dollar bill. Came back on Saturday evening; came by the boat; got the money again; Mr. Smith the proprietor, gave me the money; it was the same money that I let Mr. Donnelly have.

Cross-Ex.—I counted the money that I left Donnelly only once. Don't recollect whether Donnelly counted the money or not; suppose he counted the money; Donnelly did not say at the time "ninety dollars"; I talked with Donnelly in the Spanish language know it was the same kind of money; the bill was the same; the money was the same specie; the bill I supposed was the same; some persons were around there at the time; no persons attention was called to the amount of money; I went to New York, on Friday; suppose it was the day before that I gave the money, Wednesday evening or Thursday morning; did not see Donnelly write the amount of money on a card; I told him to put the amount of money on the book; had no more gold in my hands at the time, but had some in my pockets; had no more in my hand am sure; first counted out this \$100 in my room; when I went away I told him I would come back; it was in the front entry where I told him; don't recollect that Donnelly went with me to the steamboat; I intended to stay at the House a month; I engaged a room of Mr. Donnelly; supposed Mr. D. was one of the proprietors; Mr. Smith and Mr. Donnelly were together; Mr. Donnelly went to show me the room; met them first together in the front entrance; am sure of that; My intention was to pay with that money; I gave it to him because I did not know

any one else; I was to pay for board first week, \$40, then after \$55. I made that bargain with Mr. Donnelly, second with Mr. Smith; my intention was not to ask him for the money, but to use it for board; did not tell him to make any memorandum of it; Don't know whether any other persons took notice of this or not; did not take any receipt for the money; no one was called to witness this transaction; it was between Donnelly and myself. When I counted that money in my room I brought down just that money alone; I had about \$40 in my pocket at the time; I brought the money down stairs in my hand.

Ex. by Pros.—Did not tell Donnelly that I did not mean to call for the money again; Donnelly was in the office and some persons were around in the front door; mean by the specie, that same kind of money; gave back 12 \$5, 2 \$10, 1 \$20 bill.

Cross-Ex—Did not tell Donnelly, that I meant to pay my board with it; if a stranger there, it is customary to give the hotel keeper \$400 or \$500; only knew one lady by sight. (By Pros.)—I am from Portugal.

Dr. E. E. Taylor, sworn.—I am a practising physician in Middletown; have been in practice, 5 or 6 years, about 8 or 9 miles from the Highlands; was at the Sea View House on the 1st of August last; it is in Middletown township, Monmouth County, N. J. Arrived at the S. V. House between 9 and 10 o'clock, P. M.; saw said body there then; in the third story, think in room 34; there was a wound upon the back side of the neck of the body; made an examination, it was a puncture wound; its depth was about 6, and width about 2½ inches; wound passed obliquely in an upward direction; entered sterno mastoid muscle, passed along obliquely under the wind-pipe, touched the cartilage of it; struck the puncture of the fourth and fifth vertebra, and passed toward the shoulder; wounded the gullet in its course, made an opening in it, but did not sever it; the wind pipe was not cut through, merely wounded; am under the impression that the jugular vein was severed; the carotoid artery was not touched; the thiroid branch was cut. I elongated the wound for the purpose of getting its clots out, and viewing the wound internally; the depth from the external orifice to the internal point was six inches, from the internal point to the vertebra it was 4½ inches. I cut the carotoid artery during the examination for the purpose of examining; saw the body on the Monday following; it was on the second examination, that I saw the wound from the vetrabrae to the internal point; it was at High Point or Chapel Hill,

where I saw it the second time; it was taken from the grave; it was the same body that I saw at the S. V. House; it was a post mortem examination; Dr. Roth, Dr. Cook, Dr. Vought, Dr. Edward Taylor, my father, and myself. We were around the body and over it during the examination conducted by Dr. Finnell; we inspected the examination, leaning down over the body; it was a wound that would produce death; it was on the left side of the wind pipe, where the wound entered downward and inward, slightly oblique, not transverse; from the appearance of the wound, I supposed it to be a pointed weapon with sharp edges; can't tell how sharp they were; supposed it to be a double edged instrument; I noticed there was blood in the next room near the slain; noticed some on the wall and some on the door casing; there was blood in the room where he lay.

Cross-Ex.—The blow indicated that it required considerable muscular strength; the character of it would not indicate that it would cause instant death; a person could cut with a razor so that he would die very soon if he severed all the blood vessels; Mr. Parker and Mr. McLean were present at the examination at Chapel Hill; the wound passed the spinal column, and knocked off a piece of the body of the vertebra; do not know how near it passed to the branches of the vertebra; it is a solid bone; a piece might be broken; did not take the vertebra out; could not be certain that it was not off of the ally or branch; the ally are side bones; through these there are nerves passing; don't know what branch of nerves they are derived from; don't think there are any Doctors at the Highlands; I think I am as near as any; one of Mr. Thompson's men came for me; he was a white man; don't know how he was dressed; don't know who sent him; it was while we were eating breakfast when he got to my place, think I should recognize him if I saw him; he may have told me that the book-keeper Mr. Donnelly sent for me.

Dr. John Vought, Sworn.—I am practising physician; reside at Freehold; been practising 15 years; was at the *post mortem* examination at Chapel Hill referred to by Dr. T; wound was on the left side of the neck; about half way; the original wound was about two inches in width; had been enlarged by examination; the depth of the wound was $4\frac{1}{4}$ inches from the vertebra; entire depth was 6 inches; the superior Thiroid artery was severed; a branch of the carotoid artery; in the gullet was an incision of one-fourth of an inch; in the wind pipe the incision was not entirely through; the wound passed over the 4th vertebra to the junction of the fifth, chip-

ping a piece of the vertebra off; my impression is, that the jugular vein was severed; should think that this would produce death; the carotoid artery was bare at the bottom of the wound; a hair breadth farther and it would have severed the carotoid artery; the severance of this is instant death almost; a few pulsations is all there is afterwards; I assisted in examining the wound; probed it and measured it and was as close as any other physician that was there. I went there for the purpose of examining at Mr. Parker's request.

Cross-Ex.—Life might have been spared if a surgeon with proper instruments had been at hand; there was a bandage on the neck but no ligatures; the body was buried on the night after he died; had been in the grave two days; it was not in my power to tell how much the wound had been enlarged the wound narrowed and got down to a point as it went in; I could not tell whether the wound was the same size of the instrument or whether it had been enlarged, we laid the wound open all the way down to ascertain its size.

Ex. by Pros.—Had surgeons been there it is possible, not probable, that life might have been saved; the wound involved the important nerves and tissues of the neck; the gullet being wounded from the nature of the wound, I should judge it to be a sharpened instrument, and one which would cut both ways. the way I could tell the original wound was by its clean incision, and should the second incision be a ragged edge I could tell the original.

Cross-ex.—The original incision was about 2 inches; the other was made by Dr. Taylor in his first examination.

Ex by Pros.—Dr. Taylor pointed where his incision commenced.

WEDNESDAY—The Court opened at 9 o'clock.

Geo. A. Moses, recalled.—Identified pocket-book as his brother's it was taken from his brother's clothing; saw his brother have it at Richmond, Va., and took it from his cloths after his death; the memorandum on the card was written by witness.

Cross-Ex.—Recollected distinctly seeing pocket-book in Richmond, and observing the writing in it.

A. D. Tompkins sworn.—Made a map of the premises at Sea View. [The maps were shown to witness and identified as drawn by him.] Maps were made at request of Mr. Parker, prosecutor. [The maps were shown to the Jury, and witness explained plan of the house, and position of the different rooms, halls, &c. The maps show not only the

interior of the house, but all surrounding grounds, including the places where it is said Donnelly was seen on the morning of the murder.] Saw George Moses in room where the clothes of deceased were placed, and saw him take a pocket-book from a coat pocket; brought the coat to Freehold and gave it to the Sheriff.

Cross-Ex.—Was at the 'Sea View House' from 1st of August to 1st September constantly, with the exception of two or three short visits to my family; was there to take charge and write out the testimony, and afterward, at the request of Mr. Parker was deputized by the Sheriff, Aug 13, and from that time acted as a public officer; a part of clothing removed by witness was claimed by Mr. Lent as his.

William Smith, sworn—Am proprietor of the "Sea-View House;" guests vary as to citizenship, but are principally from New York City; the employees of the house are citizens of New York; James P. Donnelly was my bookkeeper; I employed him somewhere about the first week in July; occupied room No. 48, 3d floor; Wm. Bennett, the steward, occupied it with him; he was in N. York 31st July, and returned on the evening of 1st August; I am very slightly acquainted with Albert S. Moses; I think he came to my house about the 26th July last; he acted as barkeeper in the absence of Mr. Lent; Mr. L. saw Moses before he left; he went to New York in the steamboat; he returned on the afternoon of 1st of August. [Witness shown drawing of building, and points out the room occupied by A. S. Moses, No. 36.] Mr. Lent occupied No. 34; there is communication between the rooms; called Donnelly on 1st August about 4 o'clock, A. M.; he answered, "All right;" I knocked at his door and told him it was time to get up and call the servants; after calling him, I returned to my room on the second floor, No. 28; I don't think I had my shoes on when I called Mr. Donnelly; I put on my clothes and went down to my office; I found my porter (Francis) down there; I found Mr. D. was not there, and I asked Francis if he had come down, and he said "No;" I told Francis to go up and call him; Francis came down, and Donnelly came down in a very short time after; it was about five o'clock, when he came down; it may have been a few minutes after—can't tell exactly; he came down, walked into the office, unlocked the safe, and proceeded to take out the books; Donnelly had keys of the safe; I left him in the act of laying the books on the desk; he always deposited them every night in the safe; I left, and went up to my room to finish dressing; I had not washed,

neither had I my coat on; I was in my room some ten minutes, when I heard a stifled cry of murder, and a noise as of two or three persons running along the hall above; I went out into the hall; the first thing I saw was Mr. Donnelly; saw him in the hall on second floor, ten or fifteen feet from my room door, coming toward me, running; he went out on the back piazza, on the second floor; I spoke to him, and told him to stop; he did not stop until he got out on the piazza; I went out after him; he appeared very much excited; I spoke to him, and asked what was the matter; I repeated the question a number of times before I got any answer; I judge fifteen or twenty times; he was walking back and forth across the end of the piazza toward the kitchen; he might have come up half way of the piazza, opposite the hall door; I stood on the piazza opposite the door between the steps; he appeared like a madman, perfectly crazy; he was out there some ten or fifteen minutes; his first answer was, "he's dead; he's dead;" I asked him who was dead; he said he did not know; then proceeded up stairs to see who was hurt; left Donnelly on the piazza; found blood in the hall on the third floor of the back building; went up the back stairs; there are stairs going up back and front; saw blood first somewhere in the vicinity of room No. 48; think between Nos. 36 and 48; these rooms are both on the same side; think about five feet from No. 48, there was one large blotch of blood; appeared as if the young man had fallen there; there was a space of three or four feet between that and the next blood; I then traced blood where it commenced, at No. 34; I there found Moses lying on his face; I passed No. 36 to get into No. 34; found M. there; he was bleeding profusely; he was lying on his back; he lived about one hour and a half; I was in and out of the room during that time a number of times; was in the room a number of minutes; Moses never rose from that bed; I saw where the blood came from; it came from the neck; I conversed with him during this time; he told me how he had been hurt, and who by; I then left Mr. Moses and went over to Mr. Thompson's, my neighbor; I remained with Moses at that time not over five minutes; I was at Thompson's about fifteen minutes; I went over to get assistance; I saw Donnelly when I came back; I saw him at the top of the front stairs of the house that leads from the yard up to the office the main entrance to the hotel; he was just taking the last step on the stairs as I saw him, and stepped up on the floor of the hall; he appeared rather excited, being white; his appearance was different from what it was in the morning, when he

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came down and opened the safe; I said, "Mr. Donnelly, can't you do something for the dying man?" his first reply was "yes," afterward he said "no;" nothing else was said; Donnelly had on white pants and a gray coat when I met him; he had the same suit on when he first came down to the office; I saw different clothes on him afterward; about half an hour after I saw him standing at the front door; he then had a dark coat and a dark brown pair of pants—thick clothing; the clothes he had on in the morning were thin; the weather was warm; assistance came from other houses; Coroner Connery was introduced; he was staying at Thompson's; sent my porter to Schenck's, at the same time I sent to Thompson's; went up stairs with Coroner Connery; found a gentleman in the room by the name of Justice Banta; my porter had gone to Schenck's, and when I came back I found Barton there; he was doing something to assist the dying man, but I could not see what; Donnelly had told me previous that he was a physician; I also saw letters directed to him as Dr. Donnelly; there was a great quantity of blood in room 34, and the corner of the two halls; it appeared as tho' it had spirted from the man's neck as he went along; the track of blood on the floor of the hall led into Mr. Donnelly's room; I noticed this some half an hour after the discovery of the deed; cannot say whether the tracks were with bare feet or not; when I found Moses on the bed he had nothing but his shirt on; there was blood on the floor of room 36 near the foot of the bed; it was on the door communicating between rooms 34 36; in room 34 there was quite a quantity of blood on the floor; there was also a great deal in room 36, but only in one spot and that near the foot of the bed; there was a great quantity on the door, and quite a quantity on the door casing; there was blood on both the beds; the bed in room 34 had most on; some one had slept in the bed in room 36; I found about \$91 in the bed of room 36, between the two mattresses; the bed is composed of hair mattresses and straw mattresses; the money was in a handkerchief, in three different parcels; \$61 in in gold and bills, \$25 of it in bills, one of them a \$20 bill, the rest small bills; whether all \$1 bills or not I can't say; the balance was in gold; one of the other parcels was a small roll of bills containing, I think, \$18; the other parcel was silver, principally small change, about \$11; there were others with me when I found it; the reason why we looked for it was, Moses told us where to look for it; he said \$61 was his and the remainder was Mr. Lent's; he said the money was under his bed between the mattresses, wrapped up in a bundle; the money was taken to the foot of the bed, where Moses was lying, and there counted; he told me he wanted his \$61 sent to his mother in Philadelphia; he said her name was Mrs Concklin; do not recollect what he said her first name was; he said she lived in Locust street, but he had forgotten the number; I gave, of this money, \$56 and one \$20 bill to Mr. Botelle, a Spanish gentleman; Donnelly told me the Spanish gentleman had deposited \$100 with him for safe keeping; he told me this a day or two before the murder; Mr. Botelle gave his children into Moses's charge while myself and wife were standing in the entry; he said he was going to New York, and would be back on Friday or Saturday; Donnelly knew when he was coming back; Moses was told he was going to die; the safe was locked after the murder; I noticed it about half an hour after; it was opened some few days after the 1st of August; have seen a dirk about my house; two or three days before this occurrence I had it in my hands; it belonged to Mr. D.; I was standing beside Mr. D. at the desk, and opened the drawer for some purpose, and this dirk was lying in the drawer; he called my attention to the dirk, and said it was a very handsome, or a very fine one, or words to that effect; said it was a present to him; there was a scabbard to it; I looked at the blade; it was about six inches long, two-edged, and very sharp; have not seen the dirk since this occurrence; I remained at Sea View until the 2d or 3d of Sept.; I asked Donnelly where the dirk was; he said he had sold it to Moses; he said this after Moses was dead; Donnelly said, before Moses died, in presence of Coroner Connery, he did not know where it was; did not see any weapon in Moses's room when I went up to No. 34, and there was none in room 36; when looking for the money, I raised up the upper mattress; I saw Moses and Donnelly together the evening before this occurrence, in the hall of the hotel; they were walking about and talking; this was between 9 and 10 o'clock; I went into Donnelly's room about half an hour after Coroner Connery came; I saw a pack of cards lying on the table; the table set out a little way from the wall; this was the only pack I saw at the time; some time during day I was searching his things, and found about a dozen packs of cards—new ones, that had never been used; they were all in one package; there were chairs in the room; one of them sat against the table; there was nothing on the other side. [Sleeve buttons were here exhibited to witness and identified as being cut off the sleeves of the shirt Moses

had on when he died.] There is blood on them; they were given to me for safe keeping; I gave them to Moses's brother some two or three days after; the coat Donnelly had on in the morning was a frock coat; it was fashionably made, large sleeves and easy waist; sleeves pretty long; the bed in Donnelly's room did not have the appearance of any one having slept in it that night; he may have laid on top; some time before this occurrence, he had his pocket book out, and exhibited a roll of broken bank bills, which he said he had bought cheap and expected them to come up again, when he would get full value; he did not show many of them; we were anxious to try a chambermaid whom we supposed was dishonest, and wanted to get some bad money to try her; Donnelly said he could let her have some; gave her a \$1 Washington bill (identified by witness); Donnelly has not had the bill since; after this occurrence I saw some money picked up in the garden near the water-closet, near the fence, in the passage-way; it was picked up by a young man named Morris; I saw him pick it up; Morris was out there before I went out; I learn that he has since died; he called me there; the money was torn in pieces; (exhibited to witness). I noticed the "Ocean Bank, Washington, District of Columbia," and the spurious bill given to Mrs. Smith was also upon that Bank.

The Court was here adjourned till 3 o'clock P. M.

SECOND DAY'S PROCEEDINGS.

The Court reassembled at 3 o'clock p. m., on Wednesday. So great is the interest manifested on the occasion, that almost every seat was occupied before the ringing of the bell. The gallery was almost entirely occupied by ladies. Coroner Connery is present as a witness on the part of the State.

The examination of Mr. Wm. Smith, the proprietor of the Sea View, was continued, and, as he is an important witness, was still on the stand when the Court adjourned.

Mr. Smith's examination continued—The money was picked up about 11 o'clock in the forenoon of the murder; the bills were dry; witness looked into Donnelly's clothes that day; they were in his drawer; found one \$5 bill in his vest pocket, Mr. Tompkins took it out [a bill on the Genesee Bank exhibited]; this is the same bill; Moses and Lent were acquainted before they came to the Sea View; witness knew it from the fact that Moses introduced him to Lent; when witness went to No. 34 Moses was lying on the bed; the door

leading to No. 36 was open; the door opens against the partition; when Donnelly came on the porch, witness and his wife were there, on the second story; witness and several others looked some time for a dagger, but none could be found.

Cross-examined—Witness stated that the prisoner was about three weeks in his employ; found him to be a man of remarkable intelligence, faithful to his business, and depended on him more than any other about the establishment; the money I understood him to be on banks that were down; never knew him to make an improper use of any of these bills; he was always frank and open with them; I did not see the bills for a week or two before this occurrence; they were found on the ground—not as though they had been secreted there; Donnelly said he expected to realize 'the amt' when the banks came up; on going up stairs I knocked at the prisoner's door; he exclaimed, "All right;" after waiting a reasonable time I sent Francis for him; he said Donnelly was in his room and would be down soon; Donnelly changed his dress in about half an hour after he came down stairs; he was in the habit of changing it every day; he left the clothes he took off that morning in his room; we found a coat and three or four pairs of white pantaloons in his room that he had soiled; saw no blood on them; the pants were under the bed, the coat on his trunk; don't know that I was the first person in the room; can't tell whether Donnelly had been in his room before I went there; the room was perfectly open, so that everything could be seen; I saw no appearance of blood on any of his garments; went immediately up stairs on seeing Donnelly; left him on the porch; my wife was in the hall at the time; I saw a large quantity of blood up stairs on the third story, and looked as though it had spirted on the wall; there was blood pretty much over the whole extent of the hall; there was quite a quantity for three or four feet on the wall; it was on the part occupied by Moses; I noticed blood near Donnelly's room; it extended ten or fifteen feet along the entry; saw no footsteps until half or three-quarters of an hour after Coroner Connery came; during this time there was a great running there from all parts of the house; I had about 126 boarders at the time; all the rooms were occupied in that part of the house; the rooms were occupied in front of where Moses laid; No. 34 was occupied by Moses, and No. 36 by Donnelly; No. 32 was occupied by a gentleman calling himself A. C. McKinley and lady; saw nothing like blood on Donnelly's shirt; from the time I saw him at the safe until I again saw him after changing his dress, was not more than ten or fifteen minutes; I

saw no weapon of any kind on him; he told me that I had some transient ones; Mr. McKinley and lady came to my house on Friday afternoon; he left on Saturday morning; the room opposite was occupied by the Spanish gentleman. About twenty servants slept in the attic; knew nothing about them; I sent to an intelligence office in New York to send me honest servants; they were nearly all Irish, and as a general thing they were an orderly, nice set of servants.

[The counsel for the State objected to this kind of evidence, as being irrelevant to the question at issue. The defense claimed that they had a right to show what kind of persons occupied the rooms in the vicinity of the murder. Objection overruled by the Court.]

Witness occasionally had to dismiss a servant, but that was not a common occurrence; Donnelly rendered assistance to the man (Moses); he appeared to do all in his power for him; he assisted Dr. Connery and Dr. Augustus Mounter in sewing deceased's throat, &c.; Dr. Connery took charge of the case; Donnelly put some of the plasters to the wounds; he was there some twenty minutes at least; he appeared as the others in the room; he looked paler at the time than usual, as no doubt all did; there was blood on the door-frame, as though a person coming out of No. 36 had put his hand on it on going into No. 34; door of No. 34 was open when I first went there; I let the bar out to D. C. Lent; he had gone to New York and that was why Moses was there; the point of the dirk was not broken when I saw it; Donnelly handed witness a bunch of keys. [The prisoner here handed his counsel a bunch of keys, which witness said was the bunch D. handed him.] I do not know who handed me the night-key for No. 4; Donnelly at this time had not taken up but \$2 of his wages; it was due monthly; he had not been with me a month; I could not state the precise time I engaged him; there was no stated salary fixed; Donnelly would not disagree about that; I would not have hesitated to advance him money had he wanted it; witness considered that \$35 a month would be as much as he could give Donnelly, board, &c., included; the servants generally get up about 5 o'clock; Donnelly's bed might have been laid on the outside; it was not much mussed up; my impression, from the appearance of the bed, satisfied me that no one had been in the bed; there was a hair mattress underneath and one on the top; no words were exchanged between us as Donnelly was taking the books out of the safe, as was the usual custom; he handed me about \$150, the amount taken in the night previous;

that money was not in the safe; did not try any of Donnelly's keys to see whether they would open any of the doors up stairs; my wife tried them and they would not; the pass-key would not unlock a door inside if the key was in the keyhole; each door had its key, beside the pass-key. [The prisoner's bunch of keys were again shown the witness.] I believe the keys are all here that were when he gave them to me to examine his trunk; he appeared solicitous that I and others should examine and see; can't remember that he said he could tell his pantaloons by a tear in the seat; Mr. Botellie first saw Donnelly when he came to my house; I never remember to have spoke to him before Donnelly did; my plan was to have the books posted every night, and receive the cash am't, and Donnelly always done it to my entire satisfaction; at the time he asked me for the \$2 he said he wished to loan it to a friend; McKinley might have come on Tuesday morning; think he was acquainted with Lent; cannot say whether that was his witness he had sold his dirk to Moses for \$5; Donnelly kept the dirk in the drawer of the office; there would be no difficulty in persons outside opening the drawer; witness had not seen the dirk for two or three days previous to the murder; I saw Donnelly and Moses the night before in friendly conversation; Donnelly always showed a quiet, peaceable disposition; I found him so throughout; as a general name; represented himself from New York; Lent had very few acquaintances at the house; he came to my house about the 12th or 15th of June; he resides at Ward's, No. 145 Grand street, near the model artists; Ward keeps a liquor shop near there; I saw Moses there once; McKinley was a gentlemanly appearing man; do not know his address; he left on Saturday morning at about 9 or 10 o'clock; No. 36 is a dark room, having no window in it, except over the door; it is nearly as light as the other, No. 34, if that is open; the windows have green blind shutters; a person could step out of No. 34 on the roof of the piazza; the roof of the piazza is nearly even with the sill of the window; if the shutter was closed the room would not be very light; the door was open of No. 34 when I went up; rooms No. 30 and No. 32 also open on the piazza the same as No. 34; the windows in the parlor run to the floor, and should suppose there would be no difficulty in a person getting in them; the fastenings are very poor; after getting into the parlor, there would be no difficulty in gaining admission to any part of the house if the rooms were not locked; one of the windows was left open for Mr. Lent to get in by when he was out; Francis generally opened the house in the morning; when I saw Donnelly

first coming toward me that morning, in an agitated condition, from the direction of the main building, he was coming fast, and was some 12 or 15 feet from me; he must have come down very fast from the noise he made; I think I saw him first; I went to the same stairs; heard some one hallowing after I heard the running; did not think the noise was in the rear of the house; went up stairs immediately after I saw Donnelly; did not see the person that made the noise; heard no servaut girl call.

The Court then adjourned.

THIRD DAY'S PROCEEDINGS.

Court convened at 9 o'clock. The weather was very inclement, but the attendance was good. A number of ladies appeared in the gallery. Among the audience, and seated at the bar, we perceived Gov. Wm. A. Newell. The prisoner appeared cheerful. The trial progresses slowly. Mr. Smith proprietor of the "Sea View House," was on the witness stand during yesterday, and is again called. He gives his evidence in a very candid and impartial manner.

Wm. W. Smith, resumed—No one had been in Donnelly's room previous to myself, that I know of; his door was standing wide open; a great number of persons came from other houses, but were not allowed to go up stairs: Thompson's house is about one hundred yards from mine, but in going from one to the other it is necessary to go a distance of about four hundred yards, as there is no direct communication; Schenck's is situated north of mine; is called "Schenck's Pavilion;" Thompson's is called "Atlantic Pavilion;" there are not, to my knoweldge, any other boarding houses on the west side of the river; there is a road running along the river for a short distance, but turns into the country toward the direction of Riceville; I have learned that there are bowling alleys, where refreshments are kept, along this shore; I believe there are two—one at Thompson's, and another at Schenck's—both belonging to the boarding houses; there is a plank walk leading from the foot of my steps to the steamboat landing, and also in the direction of and past Schenck's; the dock is in front of Thompson's property; I have no knowledge that persons were in the habit of coming in at a late hour, and after my house was closed; never heard of such a thing; there was a gentleman staying at my house who did not pay his bill; I kept his baggage; he returned afterward and paid me; I did not notice that he had any other money than what he paid me; I called Donnelly in the morning and told him to call the servants; I did not see any of the servants up when I called Donnelly; the rooms Nos. 34 and 36 are in the north passage; there may have been some blood in the south passage; there was a little on door No. 37, between the floor and the knob of the door, which is situated at the corner of the passage; after leaving Moses, I went to Mr. Thompson's; on going down stairs, I saw Donnelly coming out of the water closet, in the rear of the house; did not notice his shoes.

Recalled by State—I never saw Donnelly before he came to my house; what I have said to him is from the acquaintance I had of him—an acquaintance of about three weeks; do not know whether he is in the habit of playing cards; I had no opportunity to de-

tect his dishonesty if I had suspected it; my books are kept in such a way that it would be impossible for Mr. Donnelly to defraud me; they were kept so by my order; I should not advanced him any large amount of money—nothing more than was due to him; I paid him \$2 on Sunday before this occurrence; at that time he did not say whether he had money; never saw him have any of any account; I expected to settle with him monthly, agreeable to hotel rules; his name was on the help-roll; he put it there himself; he knew that all our help was employed in this way; and it was so stated on that book; when I saw Morris picking up this money he was in the garden, near the water closet, two or three feet from the fence,—in the garden side of fence, and on the opposite side from that which I was standing; he had no other bills in his hands except those he had picked up; he had before given me bills of the same character, and torn; about 15 minutes before this he gave me some that he had taken from the water-closet; these were offensive in their smell; Merris examined the water-closet first; found some pieces of money; returned to the office and procured a candle, searched the closet again and found some more; I saw him go; I was not in the water-closet; (witness here gave a statement of the manner in which Morris found the money by the fence, and how witness's attention was not called to the fact; the money had every appearance of being flung there that morning; it was dry and in good order; it had rained excessively on the Wednesday or Thursday previous to finding this money (on Saturday morning,) and continued raining all day and night; the bills were in a wad, and looked as though they had been twisted or screwed around in tearing them; Mr. Donnelly generally changed dress about 11 o'clock, to make preparations for dinner; I never on any other occasion knew him to change his dress in an hour after he came down stairs; the color of these pants that I found were white; I never remember having seen him wear thin black pants and coat; the gray coat was sent to Mr. D. at Freehold, it was packed in a valise with shirts, &c., the next day after this occurrence, it was three quarters of an hour or an hour before the death that Moses was told to make what disposition of his property he wished; I did not tell Donnelly to stay in the office and I would go to Moses's room; I should have have recollected it if I had, from an occurrence that took place in Moses's room; I recollect remarking to him as soon as I returned from Thompson's "that this was a pretty piece of business;" he was leaning against the frame of the front door; he made no reply; his appearance in Moses' room was not by any means the same as when in the hall below; he was quite calm to what he was when I met him in the morning. [Recess of five minutes.]

Examination resumed—A portion of the time he stood still; some of the time leaning on the railing at the end of the piazza; my impression is that I met Francis coming up the steps from the office to the second floor; there was a piece of the scabbard of the dirk; a piece belonging to the point of the scabbard, about an inch long, of German silver; on the morning of the murder, this piece was picked up inside of the bar by a gentleman named Henry Miller; it was picked from a box used for holding scraps of paper; there were scraps of paper in it at that time; the box—as generally emptied every day; I had seen this broken piece lying in the drawer of the desk previous to this; it is now lying in the desk which is standing on the top of the counter; the clothes sent to Freehold to Donnelly were sent in answer to the request of Donnelly to send clothing, and voluntarily by the officers; Morris was lead into the garden by seeking the bills lying under the tomato vines, while

looking through the fence; I got this information from Morris.

Margaret Rowan, sworn—I reside in New York; was living at Sea-View House last summer; was living there on the 1st of August; I knew Donnelly; I was employed in laundry; also had charge of servants' dining room; came down stairs about 5 o'clock on Saturday morning, August 1; went to laundry; from there went into the office; it was about quarter of an hour after I got up; there was no one in the office; went in to get the pass-key to open the servants' hall; was in the habit of getting the pass-key from Mr. Donnelly; did not get the pass-key on the morning of the 1st of August, as Donnelly was not there; came through the dining-room to go up stairs to look for him; I expected to go by the back stairs; saw Donnelly when I went to the back stairs; Mr. Smith was with him; they were standing on the piazza, by the back piazza door; I stood at the foot of the stairs; stopped there listening to Mr. Smith asking Donnelly, what was the matter with him; did not see Mr. Smith leave the piazza; did not see Donnelly there alone; I missed Smith from the piazza—that is I did not hear him talk; saw Donnelly leave; he came down stairs and ran to the water-closet; it was about three minutes after; I did not hear Smith talk, that I met Donnelly coming down stairs; he came down jumping, two or three steps at a time; I was standing at the foot of the stairs; I moved around toward the kitchen door; he ran into the water-closet; appeared very much excited, and was very pale; he ran from the water-closet toward me; I was standing; spoke to him—asked him what was the matter with him; he ran along the wall of the back part of the main building, and picked up something under the dining-room windows; he was about six feet from the building; he ran past the kitchen window, passed the laundry, and jumped over the fence going into Mr. Schenck's property; I stood by the corner of the kitchen when he picked up something; this fence adjoined the corner of the laundry; there is a building there called "servants' water-closet," opposite the laundry; I went to the fence and looked down after him; he was going down toward the river; was running very fast; I saw him pass Mr. Jarvis' cottage; lost sight of him there; when he ran by me he had something in his hand; he picked it off the grass; he had something in his hand after that; I do not know what it was; he had it in his right hand; as near as I could tell it was about that length (here witness showed length by placing her finger on her arm about eight inches from the tip of her fingers;) when he was going down along the laundry I went after him; he stopped at the servants' water-closet, and tried to open the door; did not get it open; he was very much excited and very pale; he made a short step when I spoke to him as he passed; my reason in going to the fence to look after him was, I thought very strange to see him act so; I never saw him do it before; I washed up the blood in the hall; Donnelly had on white pants and a gray frock coat; I saw tracks of blood in the entry.

Cross examined—Mr. Smith gave me the pass-key about 20 minutes past 5, at the office; I slept on the fourth story that night; I do not know who called me up, some one did; some of the men called me up, but I cannot tell who; do not know whether Donnelly did or not; my business in the laundry was to assist in washing after I got through in the servants' hall; my business there was to wait on help; Donnelly was behind the counter of the office when I got the pass-key of Smith; Donnelly went along the wall about as far as the third window of this room, [a distance of about 25 feet; prisoner surveys the distance with his

eye;] he ran along the path; the path led from the servants' hall to Mrs. Jarvis' cottage, and continued along in front of the house; that would be as good a way to go to the front part of the house as any; after he stooped down and picked up something, he turned; he did not continue down the path; when he turned around, he crossed over the grass-plot; I spoke to him as he passed the kitchen door; he picked up this something in the grass; he went fast along the path, and slow from the path to the place in the grass where he picked up something; he continued on in the same direction he was going before he left the path; the door of the water-closet has no latch; he stooped down and tried it, but it would not open; he jumped over the fence; the first effort he made he did not get over—second he did; he scrambled over the fence; there was a board across the middle, on which he placed his foot, and his hands on top; he alighted on his feet; the fence is about 5 feet high; there are no boards out of the fence; saw him until opposite Mrs. Jarvis'; I saw Donnelly after this at the office, when I got the pass-key from Smith.

At this point the Court adjourned till 3 o'clock, P. M.

3 o'clock P. M.—Margaret Rowan recalled, cross-examined—Smith and Donnelly were standing on the piazza talking about five minutes; he had gone to the gentlemen's water-closet before I saw him pick up anything; can't tell what he picked up; do not know where it came from; do not know what became of what he picked up; I do not know where the barber's shop was; do not know whether the route taken by Donnelly was toward the barber's shop or not; he understood me when I asked for the key, halted in a hurried way, and said he had not got it—(witness here gave names of servants in the house with whom she is acquainted)—I believe they were asleep when the call was made; I was not awake; I do not recollect of two calls; did not hear any call till the girls woke me up.

Jules Berthol sworn—Live in Albany; lived last Summer at Sea-View-House; was cook; was there on the first of August; occupied room No. 46, on 3d floor; Donnelly occupied No. 48, on the same floor, next to mine; the night before the 1st of August went to bed about 9 o'clock; was awake in the night, I heard two persons talking together—male voices; conversation was broken—two or three words, and then stop; they were still talking when I went to sleep; heard them as soon as I awoke; got my pass-key at the office; nobody gave it to me—I took it myself; Francis, the porter, was sweeping the office; Mr. Donnelly was not in the office at the time; I saw him, about ten or fifteen minutes afterward, cross the yard in front of the kitchen; he was running, and picked up something in the grass, just before the window; I showed Mr. Tompkins where he picked it up; I have seen Margaret Rowan since that time point out the same place; there are two doors to the kitchen,

one on the side and the other at the end; I stood at the window opposite Mrs. Jarvis's yard; three compartments in the kitchen—first meat kitchen; second, bakery; third, store-room; separate from the kitchen is the wash-room—under the same room roof; he went in the direction of the wash room after picking up something.

Cross-examined—Witness was troubled with asthma, which awoke him; does not know what time it was—supposes about two o'clock, and laid awake over one and a half hours; had no light to look at his watch and ascertain the time.

Recalled by the State—Saw Donnelly about a quarter of an hour after he was on the grass; had on a different dress; saw him passing the kitchen door, going to the water-closet; the door at the end of the building.

Martha O'Neil sworn—I live with Mrs. Jarvis; I know Donnelly when I see him; lived with Mrs. Jarvis on the first of August last; saw on that morning; saw him pass our cottage, going along by the side of the cottage, on Schenck's side; was going in a hurried manner—was running; I was standing by the safe (refrigerator), at the side of the cottage; Donnelly was about a couple of yards from the fence; was just opposite me when I first saw him; did not go over two or three yards before I lost sight of him; I was seeing to the milk; I turned round to leave the milk-pail out of my hand, which is the cause of losing sight of him; after putting down the pail I stepped along down to the fence in front of the cottage I saw him again at that time; he was stepping up on the plank walk, near Schenck's bar-room; he walked a short distance along the line of the fence, and I did not see him any more; he was going toward "Sea View;" the plank walk leads beyond "Sea View" to the dock; he had not got as far as "Sea View" when I saw him last; think this was about 5 o'clock in the morning.

Cross-examined.—Saw nothing in his (Donnelly's) hand; did not see him throw anything away; had a light-colored coat on; I understood Munter had been stopping at Schenck's during the season; Donnelly stepped up on the platform going toward the river.

Mary Giffney sworn.—I live at "Sea View House," act in capacity of second cook; got up at five o'clock in the morning, or a few minutes after; got up before Ellen Hurley; first saw Donnelly as I came down from my room; saw him at Moses' door; could not have been much nearer without being against it; no person could pass between him and the door; he was only standing there; had on a light coat and white pants; I went to the kitchen; saw him about an hour after coming down the

back stairs on the side end of the house facing Thompson's; he came into the yard; had on the same clothes; went into gents water-closet; he came down stairs^{as} though frightened; he ran down; I never saw a person come down so quick; saw him coming back and passed by the kitchen window; a few minutes after I saw him at the water-closet; he looked quite pale: in going from the stairs to the water-closet he ran in as hard as he could.

Cross-examined—I got up a few minutes after 5; think it was after 5, and not before; some one called me, but do not know who; the first I know of being called was by Mary, the head wash-girl, who slept next to me; did not hear the person's voice who called the girls up; I heard no laugh among the girls; after I was waked no one called; the room in which we slept is about two yards from the head of the stairs; I do not know whether Donnelly followed me down stairs or not; I came down quick and did not notice; the stairs I came down lead down into the entry where this man (Moses) slept; did not go out of my way in going down stairs; Moses's door was next to the stairs, in the third story; I knew it was Moses's room; I was not chamber maid; I was the first girl who went there; I did the housework till the house got boarders, and was then made second cook.

State resumed—I recollect the numbers of rooms 34 and 36; did not see the body until it was in the wagon going to be buried; have seen blood on the walls; have not been in any of the rooms.

Mary Ann Lannin sworn: Lived at Sea View House on 1st of August last; was waiter; got up about 5 a. m., on 1st August; at that time of my getting up heard a shuffling down in the entry; was about half dressed; I next heard moans; I told the girl who slept me with me that I heard a moan in the entry, and that something dreadful must be there, and asked her to go out with me and see what it was; we slept on the third floor; we went out; it was about three minutes after we heard the scuffling and noise then we came to the foot of the stairs; I saw a man in the entry with his throat cut; he was running all along catching against the walls; it was on the floor that his room was on not far from the stairs; he was not dressed, but in his night clothes; I stood there about two minutes; he was covered with blood; I left him there and went up stairs.

Cross-examined—Did not see any one else; he was in about the centre of the entry; I do not know who called me; thought it was Mr. Donnelly; a man came to the door and told us to get up—said it was late—cannot safely say it was Mr. Donnelly; but think it was; do not recollect any laughing among the girls.

State resumed—all the girls got up as soon called; some get dressed sooner than others, and get down stairs.

Cross-examination resumed—I was about half dressed when I heard the shuffling.

Bernard McLaughlin sworn.—Lived at Sea-view House last Summer, and was there on the 1st of August, in the capacity of second waiter; I saw Moses on the morning of the 1st of August, after he was hurt; saw Munter come into the office; he came in before Connery, I believe; did not see Connery come; saw Moses before Munter came; saw him in room No. 34; he was lying on the bed; he was in a weak condition; he was covered with blood; asked him how he felt; said he felt

weak; asked him if he felt like dying; said he did.

Cross-examined—Was second waiter at Sea View; slept on the fourth floor; there are three separate apartments on this floor; one used for nurses, another for female servants, and the third for part of the men help; I arose about 10 minutes of 5 o'clock on that morning; Jas. Maxwell woke me up; he was head waiter; slept in same bed with me; the last I saw of him, he was on the Highlands; understand he is now in New York: I could not tell where to find him; James Maxwell told me he woke up the girls before he woke me; Donnelly came up to wake me before I came down; he came up about 5 o'clock; I saw him; believe he knocked at the girls' door; he came in about three steps; saw us dressing and went out, after which I heard a knocking at the girls' door; some of the men had gone down when he came in; we did not inform him of that; Maxwell told him it was a pretty time in the morning to be coming to call us; this was as he turned to leave; there was nothing unusual in his manner; he had on pants and shirt; did not hear him go down stairs; about six or seven minutes after I heard knocking at the girls' door as I went down stairs; went down to the office, and then to the dining room; Francis B. and Donnelly were in the office when I went down; Francis is the porter; went from the office to the dining room; staid there some 15 minutes; went from there to the office; I was talking to Maxwell in the dining room; he told me something had happened up stairs; he came from out of the office; in consequence of that I went to the office; there was no one there; I staid there a few minutes; Donnelly came to the office by the front door, and Smith came down stairs; they came in about the same time; Donnelly seemed much agitated; Smith seemed as usual; Smith was in the office when I left, Donnelly also; I went up stairs alone; I went to Moses's room; Smith had been in Moses's room; there was no one in the room when I went in; Francis came in a little before I left; I was in about 5 or 7 minutes; no one else came in while I was there; I went down the back way to the kitchen, out of room No 34, through the hall of the third atory; there were several in the hall as I came out of the room—Ellen Hinley and some other of the girls, and some of the boarders; it was after this I saw Munter; I staid in the Kitchen but a short time; I went from the office to Thompson's and back before I saw Munter: he was just coming into the office; that was about half an hour after I had been in Moses's room; left Francis in the room when I left; did not see any one else go in; Smith was in the office when he sent me to Thompson's; can't say

whether Donnelly was there; Munter stood a moment at the foot of the stairs before he went up; he was talking to some one; there were about half a dozen persons in the office; I staid in the office but a few minutes; don't know whether Smith went out; first saw Connery a few minutes after 4 o'clock; Francis went up stairs with Munter; Donnelly had on, when at our room, white pants; I heard him speak of their being torn, but can't say where it was; he said they were bursted behind: do not recollect that he asked me at any time to see whether his coat covered the fracture.

State resumed—When Donnelly came into the office, had on light coat and pants: when Donnelly first came in the office, Maxwell said to him "Donnelly, there's something serious up stairs, you'd better go up and see about it," he made no answer; did not go up.

Cross-examination resumed—Maxwell left the house on 2d or 3d Sept.: have not seen him since.

Jacob B. Rue, sworn—Am cashier of Freehold Banking Co. (A portion of the fragments of the bills found in the garder were submitted to witness for examination.) A bill on Bank of Geneva is pronounced counterfeit; the \$2 bill on "Ocean Bank" of Washington given to Mrs. Smith to detect servant, is pronounced worthless, there being at this time no such Bank in existence; "none of the bills are genuine; they all are of small denominations; among them is a portion of a \$100 note of the kind often issued by business men, as an advertisement, and having the appearance of a bank bill.

At this point the Court adjourned till Friday morning at 9 o'clock.

FOURTH DAY.—FRIDAY MORNING, Sept. 18.

The Court convened at 9 o'clock. The examination of Mr. Rue was resumed. Some of the torn bills picked up in the garden were submitted to witness for examination, and were variously pronounced counterfeit or worthless—not a good bill among the whole.

Henry Miller sworn—Resides in Canal street in the City of New-York; was at Sea View on the 1s of August last; I laid awake in bed about five minutes; heard a stifled cry of murder three times, and the moment following heard a female, as I supposed, exclaim, "My God, somebody's murdered;" I then got out of bed, looked out of the door, and saw blood on the hall floor, up by the front stairs; I then shut my door, locked it; I occupied No. 44, extreme north-west room on third floor: I turned the key and put on my pants; opened the door and went out; this was about ten minutes from the time I first heard the cry; I went to the head of the stairs; there was a

large pool of blood—so much so that I kind of jumped over it to avoid getting my feet in it; I traced it to room No. 34; looked in and saw a young man covered with blood lying on the bed, and went in; the young man said somebody had killed him, and immediately after named the person; I was in the room from 3 to 5 minutes; the exact words of Moses were—[witness was here stopped and a question raised as to the admissibility of this evidence. After some time spent in argument, the Court decided evidence admissible. Counsel for prisoner stated their intention to file a writ of exceptions. The State then withdrew the question for the present.] Witness continued—Left Moses's room, and said in the room that I would go for a doctor; went to my room and slipped on my boots; then went down the front stairs, and passed through the office on to the front piazza; the first person I met was Donnelly, leaning against one of the columns; from the time I left Moses's room till I reached the office, was about five minutes; he appeared to be in a state of very great nervous excitement; he was very pale and looked very wild out of his eyes; he said to me in very quick succession, some half dozen times, "What room is he in?" I replied "He is in his room," and passed on; I had not previously spoken to him; I ran down the front stairs as fast as possible, and went over to Thompson's; asked one of the colored waiters if there was a doctor in the house; he said he believed there was one on the 2d floor; went to the room designated, but found none; I went back, and went up by the back piazza; saw Donnelly coming out of the water-closet; his dress was changed; I passed up the back stairs to the third hall, and into my room, and finished washing and dressing; then went out: there were a number of persons in the hall; I passed through room 36 into 34; saw among others, Munter, a barber at Schenck's; Coroner Connery was also there; I passed again into 36 with Smith and Round; saw them lift up the mattress; saw them take money therefrom; it was wrapped in a white handkerchief, not very clean; went with them to 34; I think Round opened the package and commenced counting money; at that moment Connery was sewing up the wound in Moses's room; I then heard him make the remark to the young man, "As you are about to appear before your God and Maker, it is necessary you should speak the truth and nothing but the truth," and words to that effect; a moment after I went to my own room: did not go to Moses's room again while he was living; the door of 37 was not open when I first went into the room; it was open afterward.

Cross-examined—I did not think Smith was excited; do not think I was excited; Donnelly

appeared to be nervously excited; don't recollect that any one else was excited; he appeared more calm when coming from the water-closet; I saw him up stairs when Coroner Connery was there; was walking up and down the hall; looked a little more excited; I had made up my mind that Donnelly was a man of impulsive disposition; I had been to the house 3 weeks less two days previous to this occurrence; there was white matting on the floor; after I finished dressing met Donnelly coming out of the hall toward front of stairs, on 3d story; I think I saw him in the hall of main building.

Dr. Robert Cook sworn.—Assisted in a post mortem examination at the 'Sea View House' in company with Dr. Edward Taylor, Dr. John Vought, and others; the Doctor gives a description of the wound as previously given by other physicians; says that the ——— artery might have been taken up if surgical aid had been on the spot at the instant; does not think this would have saved his life; I should think the instrument used was sharp at the point and both edges; a narrow instrument.

Peter F. Schenck, sworn.—I reside at the Highlands; 300 or 400 feet from the Sea View House, in a northerly direction; was at Sea View on morning of Aug. 1, a little after 6; went to room 36; saw Donnelly, Coroner Connery, and others in 34; passed through 36 to 34; Connery was trying to staunch the blood running from Moses's neck; Donnelly was near foot of bed; Connery told Moses he couldn't live but a short time; he told him not to accuse any one wrongfully; he asked Moses who cut his throat; Moses said, 'Donnelly did it;' Donnelly stood by; a short time after, all the gentlemen who were in Moses's room went out; shortly after I went to door of 34, in company with Staden and Willson; Staden asked Moses if he was aware he could live but a short time; Moses nodded his head and said 'Yes;' Staden said, "Be sure and don't accuse any one wrongfully about this;" Moses then said, Donnelly the book-keeper, cut his throat; Mr. Donnelly was not present then; Willson asked Moses if he had any previous quarrels or disturbances with Donnelly (answer to this question objected to by counsel for prisoner—objection sustained by the Court.

Adjourned till 3 o'clock, p. m.

Court opened at 3 o'clock. The Court Room was filled with spectators immediately after the ringing of the bell. A large number of ladies are present. The prisoner is surrounded by his relatives and friends, but his appearance is not as cheerful as it has been.

Peter F. Schenck, recalled—When in Mo.

ses's room I saw money being counted over; do not know how much; Moses said he wanted \$61 sent to Mrs. Conklin, Locust street, Philadelphia; I then left the room; Mr. Connery was then impanneling the Jury in a room opposite Moses; it was about 15 or 20 minutes before he died that I left; I went home; and returned in about two hours; Mr. S. asked Moses if he was asleep or awake when he was stabbed; the force of the blow woke him up; he saw Donnelly, ran after him, followed him into the hall, and then returned into his room, No. 34; said he was in No. 36, lying on the bed, when he was stabbed; said it was daylight; he was asked by Mr. Smith or Mr. Wilson if it was in the night when he was stabbed; said no—it was in the morning—daylight; I searched for the weapon in the afternoon, between three or four o'clock; first searched in the bar; searched it thoroughly; also searched wine cellar adjoining the bar; searched up stairs in No. 36; turned over mattresses; also searched in No. 34, where Moses was lying dead; looked under the bed, but not between the mattresses; on the opposite side of the "Sea View," and on my land, is a gully, which starts about 75 feet from Mrs. Jarvis's cottage; the bottom of this ravine, near the line fence, is very thickly grown with cedar brush, so much so that it would be difficult to get through without being torn or scratched; about 60 feet north of this fence is my bowling saloon; near that saloon, next to walk, is a pair of stairs; this walk runs to Thompson's dock; on 1st August heard Smith ask Donnelly where the dirk was he had seen in his possession; Donnelly said he did not know; was then asked some other questions by the Corner's Jury in regard to the money; think he was asked how much money he received from the Spanish gentleman; he said \$90; was asked how much money he had when he came to the Sea View; said about four dollars, said he had used all of this except a few shillings; that all the money in his possession belonged to the Spanish gentleman; was asked where it was; said he lent Moses's \$50 to go to the Ocean House with a party of gentlemen, and that Moses told him if he was successful he would give him \$20 for the use of it; if not successful would return the \$50; that was Friday night; Moses won \$5 of him on Friday night playing cards over the bar counter, Mr. Smith asked where the balance of the money was; he said he had it; Tompkins then asked why he didn't give it up; said he had not been asked for it; Smith asked Donnelly for the money; Donnelly counted out \$45, and gave it to Mr. Smith; I think the Spanish gentleman then came into the room; told Donnelly he had given him \$100 for safe keeping; Donnelly said it was on-

ly \$90, Thompson then said to Donnelly, "You lent \$50 to Moses and he won \$5 playing cards, and \$45 you have now given Smith which makes \$100;" Donnelly then paused and said nothing; I think about this time Tompkins said, "Donnelly you don't appear to know anything about the dirk—the dirk that Smith speaks of?" He said, "I sold it to Moses for \$5," he asked why Moses wanted it; Donnelly said, "Moses admired it, and he sold it to him; another reason why he sold it, he had lost a piece off the end of the scabbard: believed he lost it in the yard;" Smith then said, "the point of the scabbard is in the office drawer;" Donnelly was asked where the safe key was; said he did not know: was in the habit of leaving it in his vest pocket; said, if permitted to go alone, thought he could find it.

Donnelly said he lost the \$5 with Moses at five minutes past 11 o'clock that night; Donnelly said he went to his room; Moses came there with light; they remained in the room together five or six minutes; saw nothing more of Moses till next morning, near the landing of stairs on third floor, coming from his (Moses's) room, bleeding; Donnelly said he was frightened, and ran from him.

Cross-examined.—I saw no change in appearance when he answered these questions in the afternoon; he appeared rather disturbed when locked up in his room; it was about 4 o'clock when these questions were put; these questions were answered before the Jury; there appeared to be no embarrassment in prisoner then; Jury was held by Parsons; I was on Jury; the barber shop is in my yard; the plank walk is nearer the river—about 40 feet; barber shop is some distance south of my office; do not recollect his dress when before the Jury; think he had on black coat, and had same on when I first saw him in Moses's room; Jury was held in basement, by Parsons; Donnelly took from his pocket-book \$45; he had one new cent; saw no other money.

The witness is next examined in regard to lines, fences and situation of property surrounding the Sea-View, Mrs. Jarvis's cottage and his own premises—Schenck's Pavilion.—This portion of testimony consumed considerable time, but it is not of sufficient interest to report.

Barber's name is Montague; is the same person called Munter; do not know that he professes to be a physician; have heard him say something about having some knowledge of surgery, but do not know that he is; * * * I do not recollect of ever seeing Donnelly at my house or on my premises: I have made several searches, searched along plank walks in the ravine: almost every one was searching to

see if we could find anything: nothing was found: I searched bottom of river from Thompson's dock as far as I could see the bottom: searched nearly 30 feet down from high water mark: the distance from plank road to high water mark is about 30 or 100 feet: when Connery was trlking to Moses about his situation, Dr. Wallace, from Thompson's, was present, and I believe assisted in counting the money: Smith was there, I think Munter, and a number of others: think there was not a high board at the foot of the bed: Donnelly was standing there: think I saw him step toward Moses and do something: cannot say what: it may have been that he was handing something to Connery: did not know Donnelly was suspected until I heard him call to those present to take notice of his clothes, as he had been assisting, and stood in a very critical situation: there may have been some blood on his clothes or may not: think he had something in his hand, a rag or towel: I looked at his clothes, but not particularly: did not notice any blood on them: had on black coat: in speaking of Moses in the entry, Donnelly said he was afraid he was going to take hold of him: did not say he was coming with his hands raised: he said he was frightened when Moses came toward him, and he ran from him: said he was coming up the front stairs at the time of seeing Moses: dont recollect whether he said he was coming up from the office: I believe there is no other way to get up from the office: at the examination I think there were other persons present: Mr Tompkins and Mr. Thompson were the principal persons who questioned him: he was told by Coroner Parsons that he need not answer any questions unless he chose: he said he had answered all questions asked him that day, and did not hesitate to answer any others: I do not think any of the jury were in his room that day: I believe Munter slept over my office on the night of July 31.

State resumed—Witness points out his premises to jury on the map, and various paths leading thereto, after which the Court adjourned to 9 o'clock on on Saturday morning.

FIFTH DAY'S PROCEEDINGS.

SATURDAY MORNING.—Court opened at 9 o'clock. The weather was very inclement, notwithstanding which the Court-room was crowded, and among the audience a number of ladies.

The prisoner still preserves his demeanor, though apperently not quite as cheerful. He was attended by his father and other relatives. His sisters were not present this morning.

Much time is occupied in the examination of maps by witnesses, and explanations in regard to localities surrounding the scene of the murder. These matters we omit as they would not prove interesting.

Peter F. Schenck recalled.—It was Friday night that Moses was going to the "Ocean House;" my house is in view of "Sea View House." (Map is here presented, and witness examined at length in regard to localities.

Wm. Wilson. sworn.—I Reside in New York City; was stopping at Thompson's, Highlands, on 1st of August; was at the "Sea View," that morning; was in rooms 34 and 36; Coroner Connery and Donnelly were in the room; a man was lying on the bed with a stab in his throat; his name was Moses; this was about 6 o'clock; Donnelly and Connery were assisting the wounded man; don't recollect Munter's being there—minht have been, but I should not have noticed him if he was; I asked where the knife or dagger was that cut the man: no one knew; I asked, if no weapon could be found, how it could be that he cut his own throat; looked to see if a could find any weapon, and told others to look; could not find or hear of any; I remarked that it was strange no weapon could be found; Connery turned around and pointed to Donnelly; the manner in which he pointed led me to suppose Donnelly did it; it surprised me, as he appeared to be taking as much interest as any one; asked Connery if Donnelly was suspected; he said he was, and that Moses told him Donnelly did it; I asked him more particularly, and he said he had organized a Jury and taken testimony; told him if that was the case Donnelly should be confined; it was done; after this Connery organized another Jury, and I staid in the room with Moses; previous to Connery's leaving the room he told Moses he could not live, and ought to prepare himself for another world; Connery left and I staid in the room; there was a lady in the room, the two barbers and Mr. Schenck; there may have been others there; I left the room when he died; did not notice whether others came in and went out; this old lady stood at the foot of the bed; she told Moses he was about to die, and ought to be careful what he said about accusin' any person who killed him; warned him very strongly about accusing Donnelly, as he might be mistaken, in getting up out of his sleep; told him he had a soul to save; talked to him about religion: endeavored to impress the awful thing of a man agoing to die and accusing a man wrongfully: repeatedly asked him to think over again and see if he was not

mistaken: she said that in consequence of their being together late last night, thinking of the man when going to bed, his face being strongly impressed upon his memory, rising out of his sleep he might be mistaken in the man: I was watching him while she spoke: he looked at her and looked vexed that she should ask him and talk to him so much: said he had told her "a dozen times Donnelly is the who stabbed me:" told her he did not wish her to ask him any more: this was about a quarter of an hour before he died: she then said something more about preparing himself for death: a faint smile came over his face and he turned away, as though in derision at the idea of dying: immediately after, complained of his legs getting cold, and said, "rub my legs with vinegar:" lady looked for vinegar and asked for it, she said she could not find any, but she had a pitcher of water; said that would do if anything she poured some on his feet, and I rubbed his legs: he said it made him feel better: I said to the small barber he will die soon: I then asked Moses if he would tell me who stabbed him: this barber was also asking him questions: he answered my question by saying, "Donnelly," I asked him, "What Donnelly: the book-keeper?" he said, "Yes, the book-keeper." I asked, "Was it the man with long curly hair?" I asked, "How he could tell—it was dark, was it not?" he said, "No; it was not dark, it was light enough to distinguish his features," I think he said nothing more to any person: he died about five minutes after myself and the little barber were holding him: Mr. Schenck and the other barber might have been in the room at the time.

Augustus Munter sworn.—I spell my name Munter; lived at Schenck's on 1st August; kept barber shop; slept in the main building, in the attic; slept there on the night of the 31st July; had not slept in any other place previously; was at "Sea View" on the morning of the 1st of August: went away a little after five o'clock; Francis, the porter, came after me; went up to and went in room No. 34 at Sea View; the porter went up with me; Francis stood outside; he stood there till I gave him directions what to bring me; he went to get thread, needle and plaster; I was alone in the room 10 or 15 minutes; I looked out of room door during this time; saw Donnelly standing at door of No. 36: stood up to the door and looked through the key hole; he stood as though waiting: he requested me to go into No. 36 and unbolt the door and let him come in: I asked him to come into No. 34: he told me he might soil his feet on the floor; I did not open the door of No. 36: took hold of his arm and requested him to come in and assist me in

dressing the wound: he seemed at first to refuse, but afterward came with me: he came in behind me, and as soon as Moses saw him he pointed to him and told me that was the man that did it: I asked Donnelly if he had any adhesive plaster: I threaded needle afresh for him to sow up the wound; when I first came in I took up external jugular vein and tied it together: after that I prepared for stitching; Connelly came in and I gave up to him: the vein was severed: no one was present when I took it up: I took my probe and probed the wound: it extended for about four inches in longitudinal was and about 1½ inch in diameter: Connelly sewed up the wound: Donnelly was absent for plaster about five or ten minutes, can't tell exactly: when he was going to assist in putting on slips of plaster I cut, Moses said: "Keep that man away—he has done enough for me;" after Connelly came in and asked who done this, he said Donnelly did it; Connelly asked if he had any request to make, telling him if he had any request to make, telling him he could not live long, and would soon appear before his God; he said he had some money between two mattresses, which he requested Connelly to send to his mother in Philadelphia, No. 151 Locust st. Mrs. Matilda Conklin; the money was brought out by Dr. Wallis; the money was counted.

Cross-examination.—Saw Alderman Wilson in the room, also Mrs. Bradford; cannot say precisely when she came; when Moses accused Donnelly of doing it, I asked whether he did, and he replied, "it's no such thing;" when I first went Moses asked me if I could stop the bleeding; asked me if I was a doctor; I told him I was sent for as being one; I told him I would do all I could for him; a few minutes after I told him he could not live; I told the porter I slept in an attic at Schenck's; said he had been to look for me before; he said Donnelly had been there for me; Donnelly did not say he had been for me; he was not by when Francis told me he had been for me; I came to Schenck's on the 27th of July; previous to that I was at Sea View House; kept a barber's shop there; I had been there since 27th of June; had never slept over the office at Schenck's; shop was there; I called for a light to heat plasters; Barney McLaughlin went down stairs and got a candle,

State resumed.—Have had experience in wounds previously; studied surgery in Germany; was surgeon in the Prussian army; have had experience in this country; was in the United States army in the Florida war, and part of the Mexican war; it is customary in Germany to connect the business of

surgeon and barber; I went through a regular college course of study.

Cross-Ex—When I went into the room, a man appeared to have been wounded near 2 hours: judge from the amount of blood lost: wound looked dark, as though it had been done some time.

Wm. W. Smith, recalled.—In the room where Donnelly was confined, after calling of Jury, while I was nailing windows, I asked Donnelly how this occurred: said he knew nothing about it: said he came up stairs for his shirt collar, and first thing he knew, he met this young man, who rushed upon him, caught him by the coat, and tore it: said he was running around the hall with his arms spread open, bleeding: in the afternoon, before Parsons, he said he had played cards with Moses on Friday night: had lost \$5 with him, and had lent him \$50 to go to the Ocean House, and was to be paid \$20 for the use of that \$50; he went to the Ocean House on Friday night: he also said he had \$45 in his pocket: was asked why he had not given it up: said he had not been asked for it, I then asked him for it: took his pocket-book and gave me \$45: it was all in gold: I gave the money to Mr. Botelle, the owner: when he was shown the worthless and torn money, Donnelly said he had had that money in his possession: said a few days before this occurrence he had torn and scattered it about the premises, as it was useless to carry it any longer: I was in Moses's room that morning: he seemed glad to see me; held up his hands and called me by name; repeated in succession, he had been stabbed—he had been murdered—his throat had been cut; I asked who by, and what was the cause; he said, Donnelly, your book-keeper; I then said I will go look for a doctor; I then went to Thompson's; when I returned, I went up stairs with Connery; found Munter, Mr. Allen, Rowan, and others; Dr. Munter was attending to Moses, and I requested him to let Connery take charge of him, as he was a regular physician; Connery took charge; saw Donnelly come in the room shortly after; Moses noticed him the instant he entered the room; says he "that's the man," and pointed to him; "keep him away, don't let him come near me;" Connery told Moses to keep quiet he would be properly taken care of; he lived about an hour or an hour and a quarter after Connery came; during that time I heard Moses say, "Donnelly the bar-keeper had killed him," said it during that period ten or twenty times; he said the first thing he knew that morning, he awoke by the force of some one stabbing him; saw Donnelly; jumped out of bed and ran after him; caught hold of

his coat and tore it; and that was the reason he knew it was Donnelly; Connery's Jury had access to Moses's room.

Cross-examined.—Heard Moses say in Donnelly's presence that Donnelly did it; he replied, "My dear fellow, you are mistaken—I had no occasion to hurt you;" Moses said, "Donnelly, you know you are the man;" Donnelly made no reply; was not calm in manner; was excited when Moses said this; I never heard Moses express any idea in regard to a future state; did not ask any one to pray with him; it struck me as a singular fact that he made no reference to that subject; Connery and a number of others were present when Donnelly told Moses he was mistaken.

Direct-Examination.—Saw Mrs. Bradford in the room about three or five minutes before he died; first saw her about 15 or 20 minutes before he died; Mrs. B. asked him how he could be sure, so early in the morning, about who stabbed him; he told her he woke up and saw him before him, jumped out of bed, ran after him around the hall, and caught hold of him; she said he might be mistaken, it was early—she thought it impossible for him to be certain; Moses appeared quite angry with her, to think she should try to make him say what he didn't think, and turned over on his side from her, and said he'd answer no more questions; she was talking to him about five minutes.

Peter Staden, sworn—Kept a barber's shop at Thompson's on the 1st of August last; I was at the Sea-View on that morning; Connery was there when I got there; he came out of the room next to 36 when I was coming up stairs; I went in the door where Connery came out; Moses was lying in the room; Wilson was there, and Schenck was coming in; I felt Moses's pulse; it was very low; I informed him that he was in a dying condition; told him that his time was very short; I told him it would be too bad to die that way and leave behind such a name for Donnelly; he said Donnelly, the book-keeper cut his throat.

Dr. Edward Taylor, sworn.—Am a physician; have practiced some thirty years; reside at Middletown; was called on to make an examination of the body of Moses; saw the body at Chapel Hill burying-ground after it was exhumed; the wound was on the left side of the neck, about two and a half inches across and six in depth; the external jugular vein was divided, and branches of the carotid artery; the artery on the left side was also divided; my son said he divided that on the first examination; some of the muscles were cut; the windpipe was wounded but

not cut through; the form of the weapon would suggest that it was made by a pointed instrument. (The further examination of witness was principally the same as that of the other physician; judge it to have been a fatal wound; the man died from that wound; immediate medical aid would not have saved him; life might have been prolonged.

Cross-examined.—No inflammation could have set in so short a time; he died from loss of blood.

The Court here adjourned till 10 o'clock on Monday morning.

SIXTH DAY'S PROCEEDINGS.

MONDAY MORNING.—*Dan. C. Lent sworn.*—I was acquainted with Albert S. Moses; long in July last summer; this summer, 1857; saw him at the Sea View; on Wednesday evening I went to New York; returned on Saturday afternoon about 4 o'clock; did not see Moses until after dark; he was laid out; was the same man; Moses was buried at Chapel Hill.

Cross-Examined.—I saw him in Tennessee; had not seen him since until this summer; was acquainted slightly when I went to Tennessee.

Helen Hurley sworn.—I lived at the Sea View on the 1st of August last; heard a noise on the morning of that day in the entry; the girl that slept with me asked me to come out with her; I was undressed at that time; heard a great noise and shuffling, as if two were there, and one wanted to get away from the other; went down stairs; saw a man with his throat cut, and blood lying in the entry; went down 20 minutes after I was called; had his hand on the wound in the neck; then returned to my own bed room; Mary Ann Lanner was with me; heard a knock at my door that morning; did not see the person; he looked in the room twice.

Cross-examined.—Could not say who it was that knocked; the face of Moses was toward me; he looked around up and down the entry, and slowly turned; there was a great deal of blood on him and on the floor; he seemed to be trying to stop the blood; blood was streaming down his shirt; did not see any one else there; I came down all but four steps; don't know who usually called us; usually called us 10 and 15 minutes before, and at 5 o'clock.

Francis Baugh, sworn.—Lived at the Sea View on the 1st of August; saw Moses and Donnelly the evening before, about 11 o'clock, in the office; saw them going up stairs; I closed the house that evening; opened it next morning; found it as I left it; was in Moses' room the morning he was hurt;—

should say it was about a quarter past five o'clock; don't know whether any one was in there before I was; Mr. Smith asked me to go in; met Smith coming toward me on the stairs when he asked me; found Moses in room 34, back part of the room; I asked him what was the matter; he said that Donnelly had cut his throat; I left the room.

Cross-examined.—I went after Munter twice; don't know of any one else going after him; can't say that Donnelly did go for him; I only supposed he had gone for him; when I came down stairs I did not see Donnelly in the office, and then I supposed he had gone for Munter; I went right off for Munter; did not find him the first time I went; I went down on the plank road; I went up in front of the main building at Schenk's: all the blinds were shut; went up in same place the last time; I passed around the bowling alley; went to the office both times; found no one at the office the first time; did the second time; saw Mr. Munter; not exactly in the office; the first time I did not return to the Sea View: part of the way only; did not meet Donnelly coming from that way; did go and return on the plank walk on both occasions; I went to call Mr. Donnelly up that morning; I should think it was 10 minutes to a quarter past 5; he answered me; he said yes, or something to that effect; did not open his door; knocked at the door; did not call him more than that; did not hear him get off his bed; could not say which direction his voice came from; he came down in about five minutes; saw him in the office; seemed to be moving around in his usual way, and at his usual business; I could not say how long he was there; can't say he said I will go up stairs and dress myself; Mr. Smith was not in at this time; Mr. Smith called me; I slept in room 45, opposite Donnelly; did not hear Smith call Donnelly; 45 is the first door after the store-room; I should think 48 was the one front; Jules Bartholf occupied room opposite mine; went up a little before 12 o'clock; did not see any light there; if there had been a light there I should have noticed it; there are fan lights over the door; heard no noise in Donnelly's room; don't recollect whether Moses asked for a light in the office that night; Donnelly told me to shut up the house; he would go to bed; no boarders left that I know of down stairs; no difficulty of their going out of the house that night if they pleased; Moses and Donnelly were friends when they went up stairs; could get in if there was a window in reach, or break in; there is a green blind in my room; did not look out to see if the shutter of 34 was

open or closed: the weather was pretty warm: I was porter at the Sea View: the bar-room was down beneath; very near the plank walk: the alley and bar-room are in the same building: it is nearer to the Sea View than the hotel.

Direct Ex. resumed.—When I partially returned, I came as far as the bowling alley of Thompson's, to see if I could find this Mr. Munter; can't say how far it was from the building that I met Munter; he made the remark: I am going to bed, close up the house; don't recollect of their taking any lights up with them; there is a light in every hall; I should say I did look over Donnelly's door and remarked no light; did not look over the rest of the doors; do not know that I looked more particularly over 48 than any other; guess it was about 5 minutes after Donnelly went up that I followed; when I called Donnelly in the morning, he came out in the entry before I got out; can't say which way he went. I missed him when I went came down into the office; he was three or four yards from the the stairs, coming after me.

Cross Ex.—That would be the way for him to go to call the girls; had no more than time to call the girls and come down; the light hangs up in the third floor as you come up; it is the only one on that floor; it was a candle, should think it was a tallow candle; could see the way to the rooms; can not say that was burning that night; it is sometimes put out; I generally do that; don't remember doing it that night; it might be after 11 when I went up; I went shortly after he did; I had to close the house, put out lights, &c.; Moses, I should judge, went up first; don't remember of a Mr. Clark being in the office; and saying he believed he would go too; did not know at that time where Munter slept; did not know that there was beds over his shop; did not see Mr. Miller when I was out on the plank-walk.

Anna W. Smith, sworn.—Am the wife of the proprietor of the Sea View House; saw Donnelly on the morning of the 1st of Aug.; heard a noise in the top of the house; noise seemed to continue toward the beach stairs; thought I heard some one fall in the hall of third stairs, and footsteps continued toward the back stairs; some one ran hard through the hall; went to see who it was, and saw Donnelly run past my door, 28; heard my husband ask him what was the matter several times over; I was alarmed and ran out on the back porch; I asked him what was the matter; did not answer me; answered my husband, "he's dead he's dead;" my husband asked him who; he said he didn't know. I told my husband I thought there was some

thing wrong about him, and to keep away from him, he was so much excited; my husband went back and went up stairs; I reached up to the window to get a cloak off a hook and saw Donnelly still walking on the porch; heard a servant girl in the third story calling to Mr. Smith to come up, there was a man bleeding in the hall; Mr. S. had gone up by the back stairs and come down by the front; came toward me in the hall; asked him what was the matter; he said there was a young man up stairs with his throat cut; Mrs. Mount, Mrs. Bradford, and others, fastened their doors and asked what was the matter; I returned to my room and dressed; went up stairs—there were several girls and several boarders there; Miller and Rowan were also there; Connery was not; I did not go into the room may have gone in before Connery came, but am not certain; when I first entered the room the young man who was lying on the bed, looked at me and said, "Oh, Mrs. Smith, Mrs. Smith, I'm sorry!" I replied, "I'm sorry too; what is the matter?" he said Donnelly had cut his throat; I said, "It ain't possible; I can hardly believe Mr. Donnelly would do such a thing; perhaps he might be mistaken, and had better think it over again, and see if some one else didn't do it;" he said he was certain it was Donnelly; said he awoke from the stab and saw Donnelly standing over him; chased him to the back of the hall; told him I heard Connery and others say he had but a few moments to live, and to be sure he was telling the truth, to try and save Donnelly if he could, and not die saying he did it; he said Donnelly did it; I was in after that; was in a number of times before he died; he said, about ten minutes before he died, that Mr. Donnelly did it. (Witness identifies sleeve-buttons belonging to Moses.) There was some blood on the bed in room No. 36; the head of the bed is toward the hall.

Cross-Ex.—The weather was warm, not excessively warm; the rooms are single, and of ordinary size; Donnelly may have been talking with my husband on the stoop five or ten minutes; don't know where Donnelly went after that; think he had light dress on; saw no blood; don't know that I should have noticed it if there was blood; he had a coat on; Donnelly had always appeared to be a quiet, peaceable man; don't know anything about Moses's character; seldom saw him; should think he was stouter than Donnelly; saw nothing in Donnelly's hand; Donnelly loaned me a bad bill to detect a suspected seryant; said I could have more if I wanted it; never heard of his passing or attempting to pass any; Mrs. Bradford was in and out

of Moses's room a great deal; she is the wife of the Surrogate of New York; I believe my husband depended a good deal on Donnelly in assisting, and had confidence in him; servant girl's hour to get up was five; don't know a great deal about time men get up; Donnelly changed his clothes that morning; had on black clothes when helping Connery; did not notice what condition they were in; I was in Donnelly's room looking for key of safe; think Mrs. Bradford went with me; found a pair of white pants lying on the bed; don't know whether this was after he changed his clothes or not; did not find key in his pocket; Donnelly was in Moses's room at this time; did not find knife in his pocket; have seen Donnelly's bunch of keys: tried them on 34 and 36: they would not open these rooms: don't know the number of his pass key: they were changed so often: there were separate keys to all of the rooms, save a few that had been lost: Donnelly told me he was charged with the murder: he did not say anything more; I told him that I had heard so.

Court here adjourned till 3 o'clock P. M.

3 O'CLOCK, P. M.—*Thomas Mount sworn.* Live at Chapel Hill: have seen Mr. Curtis Lent.

C. Lent recalled.—Did not introduce Moses as Mr. Brown, or any other name: only knew him by the name of Moses: don't know in what name he sent his clothes to the wash: don't know who took the clothes at the wash.

Tho's Mount recalled.—Mr. Lent brought a body up to Chapel Hill: I buried it: I examined it: it has been taken up again since that: it was the same body that the physicians examined.

Daniel D. Connery, sworn.—Was at the Highlands on the 1st of August last; I was at Mr. Thompson's, and was called upon by some one, about half-past six o'clock: I asked what was the matter, and the person outside said a man had fallen down, or some words to that effect; I then asked if there was medicine and instruments at the Sea View: received no reply: got up and found the person had gone: then dressed myself, and reached the Sea View in about 15 minutes: when arrived there, I believe it was Mr. Smith came up stairs with me; heard there was a doctor in the room: I went in; saw a man lying on his right side and on his back; the wound seemed to me about 2, 2½ to 2¾ inches in length, dividing the sterno mastoid muscle: I asked Munter what he had done: told me he had tied up the bleeding vessels: I asked him why he did not stitch up the neck: got a needle: took the needle and sewed it up: asked if there was

any adhesive plaster in the house: then saw Donnelly in: he brought a plaster, cut it up in the usual manner physicians do: came over to the bed-side and put on those plasters with the precision and neatness of a physician: I was called upon by several persons there, whom I did not know, to hold an ante-mortem examination: when Donnelly was putting on the third plaster, he said don't let him come near me: I asked him why: that Mr. Donnelly was acting the part of a friend in rendering him assistance: when he said he had done enough; finding the man was pulseless, followed the artery up to the clavicle: I found no pulse; I felt the extremities, and they were perfectly cold; the lips were pale and the whole features proclaimed an ——— state, which clearly proved to me that the ——— had entirely ceased;—believing the man was about to die, and being requested to take his dying testimony, I got six persons as jurors, and affirmed them by raising their hands: then used the same matters towards Albert S. Moses: I asked this man, told him he was dying, and told him what a pity it was to accuse such a fine young man, using all the means in his power to try to save him: saying "what benefit will it be if you die with a stain on your immortal soul?" was then twisting and turning rather convulsively, and he replied to me that Donnelly was the man that did it: Donnelly was present; Moses did not state why he did it.

Cross-examined.—Donnelly denied it in toto: don't remember what he said: Donnelly showed no tremor, nor any of the kind, more than any man would do under such circumstances; thought Donnelly's manner to him was kind: there was a great quantity of blood from him: some three or four quarts: on the bed, on the floor and well; was blood against the wall of 34: on the opposite side of the room a clot: did not notice any blood in 36: there was the Surrogate's wife (Mrs. Bradford) there, and I think Mr. Smith; they suggested water: I said water would come out through the wound: it was given, and did so come out: my profession is a physician: from so much loss of blood, to tell the action of it on the mind—[Witness went into an explanation of the circulation of the blood in the human system]—I should say that there was more than 3 quarts lost: could see that there was very little supply then to the brain: the quantity was small: looked at the wall particularly, to know how the blood could come up there in 34; guessed from the position that the jugular vein was severed; from the blood, supposed the artery or one of its branches: the loss of blood acts probably

different on different persons; sometimes the loss of blood will have the same effect as an overflow; the loss sometimes affects the same as the delirium tremens, the effect to produce visionary characters; the last view would be naturally impressed on the mind; think it scarcely possible that a man could make that stab without getting any blood upon him; would be impossible, if he had a struggle with the man; white clothes would show it sooner than any other color; I did not see any clothes with blood on; he submitted his room to an examination; he seemed self-composed, calm, and assisted me in dressing the wound; he remained there with me 20 minutes; he came into the jury room; was requested to come there; did not see Mrs. Bradford there; some one asked him a question; he answered every question put to him; this wound could not have been made without leaving blood on the knife; so far as the wound showed externally, a sharp knife would do it; it was not a ragged wound; went over next morning to get sixty-one dollars, that Moses told me to send to Mrs. Conklin; Mr. Smith did not give it to me; having no authority, I ceased; saw Donnelly wash off the body, for the purpose of sustaining life, and prolonging it as long as possible; don't think that he would have lived so long if it had not been for the attention of Donnelly; saw no ligature: it is a nice point to put one on successfully: the water may have removed it: have practiced in the city about seven years: studied in the old Country, in the city of Dublin; practised, off and on, as far back as 1850; am Coroner of New York: have had a good deal experience in violent deaths; every other day.

Direct resumed—Question by W. L. Dayton—If a man has muscular power enough to spring from his bed, run around and return again and hold rational conversation, could his mind have been much impaired? A. It could not: he seemed to talk rational: I judge of the quantity of blood lost from what I saw: the eyesight would be first affected by the loss of blood before the mind is affected: Moses could recognize distinctly and seemed to be perfectly rational.

Q. There being but very little blood in No. 36, don't you think that the blow may have been struck without his getting blood on his clothes? It *might* be so, but I very much doubt it.

Q. Have you ever been in the country much, and if so, do you not know (speaking of animals) that the throats of hogs are often cut without bloodying the hand that did it? A. Don't know that I do; have never had any experience in that way; a man from loss

of blood may see visions as in delirium: partially he may, even though he talks rationally: Moses lived longer than he otherwise would, from the united attendance given him.

Question by Gov. Pennington—Have you not seen instances where conversations were held for a long time before the discovery of an impaired mind? A. In cases of lunacy, we often see that reason will for a time hold sway, and subsequently be succeeded by lunacy; a cut from the exterior carotid artery could not spirt the blood from the bed to the wall; I examined the room, and think from the spirt of blood on the wall that the stabbing was done inside of the door of room No. 34; the blood was opposite the bed, but think it impossible for it to have spirted from the wound while lying on the bed; Donnelly gave himself up voluntarily; showed no disposition to object; said he had committed no crime, and was afraid of no one.

John W. Round sworn.—Live at Florida, N. Y.; have charge of Seward Institute; was at Sea View on the morning of August 1st; went there Tuesday previous; I was a guest, and occupied room No. 29, third floor; I was aroused from sleep by the cry of murder coming from the entry, from some part of the house near my room; the cry was not very loud, and I did not think it earnest, but being repeated several times I became alarmed and sprang from my bed, unlocked the door, opened it, and looked into the hall; I saw standing in the door, a few feet from my room, a man covered with blood, issuing copiously from a wound in the neck, also a large quantity on the floor; being much shocked I hastily closed the door and remained a few moments in suspense as to how I should act, but very soon determined to do all in my power in the case; I hastily put on some clothes and ran into the hall, and saw the same man, but he had retired within the room and was lying on the bed and groaning; felt timid about going in the room alone, and ran down the hall hoping to get some one to enter with me, but was unsuccessful; returned and entered alone; immediately after one of the servants came in; the man on the bed upon seeing me cried, "Oh! I am murdered!" I asked by whom; he replied, "Donnelly;" I said what Donnelly; he said Donnelly the clerk; said I, are you quite sure? he replied, "yes, yes!" I then left the room, and learning that a physician had been sent for, returned to my room and finished dressing; then heard a loud voice in the hall, and on opening the door observed a gentleman standing by the door of this room, whom I afterward ascer-

tained to be Coroner Connery of New York, and immediately after, Donnelly by his side; Connery said, "As a physician and a magistrate, Mr. Donnelly, I arrest you;" Donnelly immediately submitted; Connery, Donnelly, Branford, and others I did not know, entered the room; Coroner requested us to act as jury in an ante-mortem examination he proposed to hold; in reply to questions from various persons, and to Connery especially, the wounded man said with great emphasis, "Donnelly did it."

[Mr. Bradley objected to answer. State insisted it was proper on account of Donnelly's being present. Court decided the evidence competent.]

Being asked the occasion, he said that he had won from Donnelly the previous night \$55; that Donnelly had murdered him to reclaim the money; the dying man, in answer to some question of Coroner Connery, stated he had money secreted between the beds in the room where he slept; at the request of the Coroner and others I went into the adjoining room and saw between the mattresses a handkerchief which I took, brought back, and handed to Connery; told a friend of his to take the money and count it; this gentleman counted the money, and it was found to correspond exactly, or very near, with the amount stated by Moses a few minutes previous; Moses requested \$61 sent to Mrs. Conklin, No. 151 Locust street, Philadelphia, and said that the remainder belonged to Mr. Curtis; Dr. Connery, meantime, had been engaged in relieving Moses, assisted by Donnelly and others; I left the room two or three times; once, in particular, to obtain a pair of scissors to cut bandages; handed scissors to Donnelly, who cut the strips and assisted in applying them; Donnelly exhibited the utmost composure and steadiness of hand; as soon as he saw Donnelly, Moses said, "Don't let that man touch me; he has done enough for me;" Donnelly replied,—"You are mistaken, my dear Sir;" Moses repeated these words, "Donnelly, don't touch me," or, "Don't let Donnelly touch me;" when Moses said he won \$55 of him the night before, Donnelly made no reply.

Cross-Ex—Donnelly did not say anything about the money in my presence; several questions were asked Donnelly in the other room, to which he replied without hesitation; I remember asking him several questions and warned him not to answer unless he chose; he replied he was aware of his position; he answered calmly and without hesitation; said he had had a dirk knife, but it was not then in his possession; produced a pocket knife which I examined but saw no

blood; don't recollect that any one asked him what he had done with it; think I saw Mrs. Bradley and Mrs. Smith, as I was going in the room where the investigation was held; did not examine Moses clothes, nor see anything that was taken from his pockets; he had some \$31, besides this \$61; when I saw Moses, he was crying, "murder" and "bring a doctor;" saw blood on the floor of No. 36, but did not examine minutely; when first seeing the man I was very much frightened, so much so, that I would not approach him; think from his appearance my first impulse would have been to have fled from him.

Henry Miller, recalled.—When I went in Moses's room I asked him what was the matter; he said, "Donnelly has killed me—he has ruined me."

The State here rested, and the Court then adjourned till 9 o'clock on Tuesday morning.

TUESDAY 22nd, Mr. Amzi McLean opened the case of the Defence. Mr. Bradley offered a bound copy of Thompson's Bank Note Reporter in evidence in 1852, all the banks on which the spurious bills were, are therein mentioned.

Mrs. Mary Bradford, wife of A. W. Bradford, sworn.—Was staying at the Sea View House on the 1st of Aug; occupied 16, 17, 18, 20; 16, 18, 20 on one side, 17 opposite; was on the same side that Mrs. Smiths was. I heard the alarm in the morning at $\frac{1}{2}$ past five; was up at the time; I awoke shortly before, and looked at my watch; heard heavy leaps up stairs and coming down stairs, and a muffled cry which sounded like a cry of mercy; suppose I opened the door instantly; saw Mr. Donnelly standing in the doorway in the back door at the end of the hall, as if he had just stepped on the door-sill; his back was toward me; he was standing with his right arm up leaning against the door-post and his left down by his side; his position was a natural one as far as I could perceive; it appeared a position of rest; no compression of the arm as if holding something; saw Mr. Smith on the other side about as far as Mr. Donnelly was; he was an one side and Donnelly on the other; it was about 30 or 40 feet to the back door; Mr. Smith passed me; have no doubt about it; heard Mr. Smith ask Mr. Donnelly several times in quick succession; Mr. Smith was very much agitated; Mr. Donnelly seemed natural; I think I could have perceived if he was agitated; did not seem as much agitated as Mr. Smith; Smith was

nearest to me; Smith walked to Donnelly very fast and had time to ask two or three times before he came up; this occurrence created excitement through the house; Smith and Donnelly went out of the door on the piazza; did not notice Mrs. Smith take hold of his arm; did not stay to see how long they staid. In a few moments one of the servants came down the front steps saying that a man was bleeding to death; Smith then went past my door towards the front of the door; I opened my door and saw him; then Francis ran toward Smith and whispered something to him and then he went up stairs; then I dressed myself; should think it was half an hour from the time I first heard the noise until I dressed myself; the room was then full of people; Connery, Donnelly, Munter and Ald. Wilson were there; a great many persons were in the room; I went a short distance into the room, just at the doorway, and returned and went into the room adjoining; it was the room communicating with 34; heard Donnelly inquiring for flannels; told him I had some soft cassimere which he said would do full as well; Donnelly was dressing the wounds; he moved up towards me when he spoke to me; he was standing at the head of the bed; I went to get the cloths; was gone only a few minutes; I took up ammonia when I first went up; some one took this; I think Dr. Connery.— I went through 36 when I returned; some one reached their hand over and took the cloth; think it was Donnelly; I staid there after Connery; heard Moses declaration; was there when he died. I went out in the hall and also into Donnelly's room with Mrs. Smith, but was in all the rest of the time; the jury were in another room when I went out with Mrs. Smith; when in the room I had conversation with Moses respecting this deed; this was after he made the deposition to the Coroner and the people left; there was some one in the room; might have been two but doubt if there was more than one. I regretted he had accused Mr. Donnelly of the crime, as I thought he was scarcely in a condition to recognise the one that did it; said in a meditative manner, as if he was thinking over it—"yes, I think he did." Spoke this more as if he was speaking to himself; I repeated the word think, and said, do you only think so? and he said, "I am sure of it, I know it." He then turned round with his face toward me and said, "I will tell you the whole story and you may judge for yourself. I was asleep and was woke up by some one cutting at my throat; it was done with a pen knife, and if you could see Mr. Donnelly's pen knife I think you will see the

weapon that did it." I then stepped out into the hall—Donnelly was there—and asked him to show it to me; it was perfectly clean and bright; told Mr. Moses that that could not be the instrument; said if it was not that it was something else; he then said he jumped up and caught hold and struggled with him. I expressed surprise that he could struggle with any one. "Well," he said, "I caught hold of him and he broke away from me." I appeared to doubt him I suppose, and he said, "if you don't believe it look at the marks of my bloody hands on the door." There was two or three marks on the door itself, and appeared to be taken hold of by both hands; there was a great quantity of blood about the room; that was the door leading to the hall; this was the door where I was marks of hands, and a splatter of blood on the wall near it; the room he was lying in when I saw him I understood to be the one in which the murder and struggle occurred; he said he followed him out of the room.

Q. Did he state to you the motive of the deed as he supposed? [This question put under protest, inasmuch as State inquired into it.] A. He did, but not at that moment; not long after he did; after he broke away from him he ran out at the door, and followed him nearly to the head of back stairs; he then felt pain and returned, and Donnelly went down stairs; he returned to his room and called for assistance; I asked what motive Mr. Donnelly had; he said, I won five dollars from him last night; I remarked, no man would murder him for five dollars; I was quite close to his bed when this conversation took place; did not seem to be angry with me for talking with him at that time; I talked with him on the subject of religion, but he paid no attention to it; I spoke to him on the same subject afterward, when he seemed more revived; he was irritated; I was speaking to him on the subject of religion; Mrs. Smith requested me to look in the pantaloons pocket of Donnelly; I did so, but found nothing; I held up the pants to Mrs. Smith; there was no blood on them; looked around the floor for the safe key, but found none; the pants were the same as Donnelly had taken off; [pants here shown;] no blood in room; blood on the door; it was an hour or an hour and a half after murder; Mrs. Smith and I visited Donnelly's room; think Donnelly's room door was not open when we went in; don't think Mr. Smith could open Donnelly's room with pass key; think this was after Mr. Smith and others went in to examine; there were a good many articles lying about; don't recollect whether the bed

looked as if it had been slept in; Mr. Connelly traced tracks of blood to Donnelly's room—that was after the man's death; there was blood all over the hall in every direction; people had stepped in it going in; the footprints were not plainly marked; footprints of both bare feet and boots; there was white matting on the floor; I saw Mr. Donnelly after he was locked up to have conversation with him; my son and Miss Smith and Mrs. White were with me; he protested his innocence of the charge made against him; I learned from my son that he was charged with the murder; I have mentioned to persons since that that I thought his deportment was of the utmost propriety, such as I should expect from an innocent man; think Moses did not receive my conversation on the subject of religion agreeably; I received no response; he seemed unconcerned; he said the last time I spoke to him, "Oh, trouble me no more; let me die in peace;" there were persons looking in at the door the last time; my opportunities, I should judge, were the best for hearing what Moses said; at the last moments of his life I stood at the foot of the bed; he never asked for a minister, or for prayer, or for anything of the kind; I did not know any one there; know none of Donnelly's connections; never heard of them; I was brought here as a witness on the part of the State; I never sleep very soundly; I went to bed at 12½ o'clock; could have heard footsteps in the room above; did not hear any during that night; there had been attention during the latter part of the evening to a sick child; I think I went to the Sea View House on the 26th of June; was there before Donnelly came; thought he was of a very quiet disposition; when persons were sick in the house he was very attentive.

Cross-ex.—Am acquainted with Jas. M. Smith, Recorder of New York, (letter submitted for identification;) that is the writing of Mr. Smith; (counsel for the State wished to read the letter; objected to; M. Dayton, one of the counsel for the State, said he merely wished to show that there was no discourtesy on the part of Mr. Parker toward Mrs. Branford; the Judge directed the letter to be handed to the counsel for the prisoner; prisoner's counsel objected to the letter being read; this examination was in reference to the sending for Mrs. Branford as a witness;) did not see Donnelly leaning against the bannister that morning; did not see him leaning against the bannister at the foot of the stairs; saw him leaning against the wall (letter submitted for identification;) that is my handwriting; the conversation I

had with Mr. Donnelly may have been while Mr. Smith was outside of the door; did not request Mr. Smith not to lock Donnelly up; did not say there was no danger of his getting away; said he could not get out of the ventilator; did not hear Moses say at any time it was \$55 he had won of Donnelly; he may have said \$105 for all I know; Mr. Smith may have passed through the room when I was talking with him; Mrs. Smith was in the room; Dr. Munter was in the room; when I met Smith in the hall I think he had a dark frock coat on; Moses seemed to suffer a good deal.

Ezra A. Osborne sworn—Am a surveyor; reside at Middletown; witness made a map of the Sea View and surrounding premises; describes map.

A. T. Tompkins, recalled.—Donnelly's clothing was locked up in room No. 48, on August 1; part of clothing I delivered to a gentleman representing himself to be Donnelly's brother-in-law on the Sunday following (2d of August;) don't know how many pieces; can't say whether Donnelly was admitted to his room after the clothing was put there; the balance of the clothes were kept in the room for a short time, under Walter C. Parsons and myself; I delivered them to George Finch, a Justice of the Peace at Red Bank; [pants and coat submitted for identification;] don't remember the pants—the coat shown is the one sent on Saturday; I examined the coat and found no blood on it; coat was torn when I examined it, but not in the same manner as it now appears; [witness shows Jury where torn differently;] did not measure tears, but from recollection I derive my ideas; on Sunday Mr. Rennett passed the coat out; on the 1st of September, at Squire Finch's request, I brought the clothes to Freehold; it was delivered at the house of Jos. Stillwell in my care; the Sheriff said he would send a man over and get it; I gave it up to him; saw no blood on any of the clothes; there was a bundle taken from Highlands with trunk.

Samuel Conover, Sheriff of Monmouth County, sworn.—I received a trunk of clothing belonging to Donnelly from Mr. Thompson; I locked it up in the parlor; I opened it in Donnelly's presence, I think; I gave up the trunk and contents to Donnelly; I think Donnelly took a pair of pants out; a bundle was brought to me; can't tell who handed it to me; it was said it had been left in the stage; looked as though it had been rained on.

Court adjourned till 3 P. M.

3 o'clock, P. M.—*Isaac P. Vandoren, sworn.*—Am keeper of the Jail, (pants shown)—

would suppose those to be the ones taken by Donnelly from the trunks; think that the coat was taken from the carpet bag: George A. Moses made some threats against Donnelly when he was in the prison: he said he wanted to see him, not to speak to him: went down when I took Donnelly's meals to him, and as he turned around to go away, he said he would give a hundred dollars for a lick or shot at him: said he had never seen Donnelly before: Donnelly's conduct has been unexceptionable and gentlemanly: in speaking of Moses, the prisoner has never manifested any unkind feelings toward him: have not heard him express any ill feeling toward any of the witnesses.

John Rue, sworn—I have had some conversation with a young man who said he was a brother to Moses: it was about three weeks ago, in the cars when coming from N. York: he told me he was brother to Moses, who was killed: said he was going on to attend the trial: said that if they did not convict him, he would never get out of Jersey alive

Dr. Thomas Finnell, sworn—I reside at 39 Grand street, N. Y.: I am a physician: been in practice since 1849: I am Demonstrator of Anatomy in the New York University, and Lecturer on Pathological Anatomy in the same Institution: I am one of the examining physicians attending the Coroner: I think I make more examinations of sudden death than any other physician in N. York: I attended the post mortem examination of Moses on Monday, August 3d, 1857: present, Drs. Taylor, sr. and jr., Drs. Vought and Cook: fifty-seven hours after death: body and causing death by hemorrhage; countenance natural, but body not much decomposed; on left side of neck wound $2\frac{1}{2}$ inches in length, 6 inches in depth, and two inches below the angle of the jaw; passed obliquely downward and backward to the spine; on making a transverse across the neck, and turning a flap of ——— toward the chest, all the large vessels on both sides of the neck, were exposed to view; the full extent of the wound could now be ascertained; a portion of the fourth cervical vertebra was cut off from his body, being still attached by cartilage; the instrument inflicting the wound first severed the external jugular vein, then the left side of the larynx with its thyroid arteries, and lastly the body of the vertebra; the left carotid artery and internal jugular vein not severed, although the sheath containing these vessels were exposed; the spinal marrow was uninjured; it was not such a wound as a medical man would inflict upon another designing to produce death; I should say it would be an inexperienced man, not familiar

with anatomy; a medical man would know where the vital parts lay; by drawing a knife across the throat is more mortal than a thrust against the neck in front; he would know where the carotid artery lies; at one point it is near the surface; if that is severed, death ensues in a few minutes, unless surgical aid is at hand; it carries blood from the heart to the head; had surgical aid been at hand immediately, his life *might* have been saved; I made the post-mortem examination at the request of Mr. Donnelly's friends, to ascertain the character of the wound; when I proceeded a certain distance in the examination, I discovered it was not a suicidal wound; it is possible the wound was self-inflicted, but not at all probable; I called upon the prosecutor of the State, to let him know I was going there; he agreed to it, and selected other physicians to go with me; the wound would cause considerable loss of blood in a short time; in sudden extractions of blood from the brain, it interrupts the intellectual faculties at times; it interferes with them; the sudden loss of blood would deprive the brain of its nourishment, and there would be an aberration for the time being; It would revive past impressions more than to receive new ones; in case it should end in insanity, then it, that is the impression, might remain. The brain might retain impressions of a fixed idea; impressions are so differently retained; no two alike in that respect; some hold things in mind with great distinctness and others do not. The amount of loss of blood was great, and would disturb his faculties. Q. Which one of them would get astray first? A. Can't tell. When first awaking may be mistaken; mistakes often made on first awaking; those last impressed upon the mind while waking would be impressed upon the mind; that happens in the case of healthy persons; that mistake would be more likely to occur where a man was awakened by a wound like this; a person having such a wound would be liable to periods of fainting before his death, and in sensibility during such periods; during the fainting turns the blood flows as fast as usual; there would be nothing to prevent the person from summoning his sensibility again; after such a loss as that, and loss of great quantity of blood, a single gash would produce fainting in one and not in another; the spell over he might rise again; fainting may sometimes occur tying arm up; when he faints there is no consciousness of the lapse of time; D. has assisted me in surgical operations; Professor Van Buren was his preceptor; I know brother of deceased. He called at my place twice in the city; he spoke

rashly about Donnelly; he made no threats except he intended to publish in the papers; do not recollect the words; I am in no way related to these parties; called on as a surgeon in New York; know D. has studied medicine in the University Medical College; a stab in the heart more certain and more sudden than a stab in the neck; the person he last saw would make the first impression on his mind; a right handed man could have inflicted the wound on the man lying as he was; a man could not have stabbed another and skuffled with him in the room without getting blood on him.

Cross-ex.—The Coroners select the physicians themselves to make their investigations; am not connected with any of the Coroners by blood or marriage; not with Coroner Connery. It was my suggestion that others be employed with me; after I had gone a certain distance I stopped that the other gentlemen might make suggestions; when I was satisfied it was not a suicidal wound I stopped; some of the gentlemen might have suggested a continuation; I do not recollect that I stopped at their suggestion; went there for the purpose of ascertaining the whole depth of the wound; was not certain that I was to be a witness in the case; supposed I might be called on; I made the expression that it was not suicide; think they could have heard me; they were close by, over the body: the others participated in the examination, and measured also; had an interview with Moses, brother of deceased; I did not then expect to be examined as a witness; Geo. Moses complained that I had accused the murdered man of having delirium tremens; I took away a portion of the body; took the larynx having the portion that was wounded; did not have permission from the friends or the public authorities; I exhibited it in New York; an account of it got into the papers; did not then know that a reporter was present; Connery is considered a good physician in New York; it was stated to me by Mr. Cozzens, a brother-in-law of Mr. Donnelly, that he (D.) had called for a post mortem examination; I instituted it on that account; one cannot tell so well where to strike for the heart of a person when covered with clothing; there is danger of striking a rib. In diseases of the lungs the mental faculties are retained; in cases of hemorrhage may be retained fully also; if a man talked rationally all the time don't see how he could have had his mind disturbed; would be more likely to be insane if upright than if recumbent; have heard of persons suffering from great loss of blood in recumbent positions, retaining their faculties to the last.—

A man roused suddenly from sleep might make very great mistakes; this would be still more so if addicted to gambling drinking, &c. The eye might first fail from loss of blood, before the mind did. I am connected with a medical institution in New York; Donnelly was not graduated and had not been licensed; Valentine Mott, Martin Paine, Professors Bedford, John W. Draper, W. H. Van Buren, J. F. Metcalf are of the faculty; I am lecturer, &c. There are three other Coroners in New York before whom I have made examinations; no objection to my taking the larynx by others; think if they said anything it was in favor of it. A man would, for a time after receiving a false impression, retain it until corrected by the other senses; suppose when his mind became correct he would correct the false impression; if he had no opportunity to correct the impression it would still remain; the operations of the mind would correct the false impression; it is not usual to ask permission to take away parts of the body, but is common to take injured parts for future examinations; was shown in society in which none but physicians were admitted; extracts in relation to it were published in the journals; I did not know it was in the papers; loss of blood will produce interruption of mental faculties; suicides generally cut the larynx &c., transverse; I gave the medical society full particulars of it; thought it might be suicide. I recollect Mr. Parker said to me that it was a matter of regret that no friends of Moses were present to give consent to the examination.

W. I. Patterson sworn.—Have been a tailor 25 or 30 years. [Torn coat of Donnelly shown witness.] It might or might not have been torn by hand; by bushes or something else; appeared to be by thorns on a bush; inside on the lining I see small rents in it, as if by brush, &c.

James Sullivan sworn.—For the last ten years have resided in Brooklyn; previously in New York; came to this country in 1835; am acquainted with James P. Donnelly; have been for 10 years; acquainted with his family; always considered him a quiet, peaceable young man; his character was good; never heard any one say to the contrary; never heard of his being a riotous young man; he is the only son of Mr. Donnelly; his mother is not living; have seen his sisters here; we considered him a very proper, inoffensive young man; I am 57 years old.

Cross-ex.—Defendant is 24; he has not been at home for the last 5 years; been at school; has not generally been at home for last 5 or 6 years; not been in Europe in the

time that I know of; have not so understood from the family; he has been at Washington at school; came home at vacations; I believe he was a medical student: have never particularly associated with him; has been at my house; was correct in his deportment towards me, and sober.

Patrick Merick sworn.—Lived in New York 28 years; been acquainted with the Deft. a long time; have known his father 25 years; he and my son and son-in-law went to college together; did not visit my family; have seen him at his fathers business; knew nothing but that he was quiet and peaceable; never saw or heard anything to the contrary of his being a peaceable young man; would have heard of it if he was; have heard of his actions from his father; the news of the matter created great surprise; have heard him highly spoken of.

Cross-ex.—He has been at two colleges; St. Johns, at Fordham, and Georgetown college; don't know exactly how he came to leave; it was a catholic society at Georgetown but received persons of all denominations; it was not a medical college; never heard of his playing cards or gambling; believe Georgetown college stands high.

WEDNESDAY.—*Peter J. Tully sworn.*—Was at Thompson's Hotel, Highlands, on the 1st of August last; went to the Sea View House; heard of a man there being killed; went over $\frac{1}{2}$ or $\frac{3}{4}$ of an hour afterwards; went up in the room; Mr. Wilson was in the room, Mr. Munter, Dr. Connerly, and a lady, a small lady that got the water; Moses said to Donnelly, let me be, you have done enough for me, or to me, I don't say which; at the time he said this my impression was that he wanted to be let alone and not be annoyed; Donnelly was washing blood off of him; I was at the foot of the bed holding Moses feet; he appeared to be in excessive pain.

Cross-ex.—The jury were formed at this time.

Gorden Vankirk sworn.—I live at Mr. Thompsons; on the 1st of August went for Dr. Taylor; supposed Donnelly sent me; was told Mr. Donnelly came for me to go for the Dr. and did not see me; had been on an errand to Col. Jones' and stopped at Mr. Jarvis' barn and saw Martha O'Neil and a man; stopped there about two minutes and they told me the bar-keeper had cut his throat; then went to Mr. Schenck's and Mr. Jarvis' barn, where Timothy asked me if they had seen me, for they wanted me to go after the Dr.; then went to the Sea View and first went into the office; there was nobody in the office at first; the first one I saw was

Mr. Donnelly—that man there as near as I can tell; he came through a door opening into the office; asked him if a man had cut his throat; he said it was so; I asked him who it was wanted me to go for a doctor, and he said he did; he appeared to me as if about to go up stairs to assist; he said he did for he was the bookkeeper; he appeared to be fixing his neck handkerchief and putting on coat: cannot say what time I went over to Sea View: it was after sunrise: Dr. Taylor was the nearest physician: the Dr. went on ahead of me: I went as fast as I could: I was in the wagon when Donnelly came to Freehold: it was after dark when we started: he manifested no uneasiness, but talked about the different States where he had been: he laid down in Mr. Cummings' lap and appeared to be asleep.

Cross-ex.—He has been in several different States: did not hurry myself off: may have been 15 minutes after colored man told me at the stable before I started: may not have been so long: Donnelly was putting on a brown frock coat when I saw him: did not particularly notice the style in which it was cut: saw no one else while in the office except him.

Direct ex.—Can walk $3\frac{1}{2}$ miles an hour: got to the office about 20 minutes after colored man told me I was wanted.

James Maxwell sworn.—Was head waiter at Sea View House on the 1st of August: Donnelly came to room of servants about 5 o'clock: thought his business up there was to call help: sometimes he would come up back stairs: I was dressing—the rest had gone down: told him he was late in calling: suppose he saw the rest had gone down: he had his pants on: can't say if they were white, now: saw nothing unusual in his appearance: don't know if he had his shoes on: he was at one end of building and I at the other: he knocked at the doors of the female servants as he went down: did not hear them say anything: he did not call loud if he called at all: he generally called help, though not always: suppose he had superintendance as much as Mr. Smith: suppose I went down in about 10 minutes.

Robt. Codrington sworn.—I live at 366 $\frac{1}{2}$ Bowery, New York; keep book and stationery store: am man of family: have known deft. 13 or 14 years: first became acquainted with him at sabbath school: has often of late years visited my store: so far as I have ever known, his general character was very good: am a graduate of Georgetown college: it was published that he graduated honorably with his class: saw him in vacation: we were not companions: our ages were differ-

ent: he would call to see me in my store: have known him to study medicine with Dr. Van Buren as much as 3 months: never went around New York with him much by day or night: have been on pleasure excursions: never knew or heard he was in the habit of gambling, nor of his having counterfeit money: has often made purchases in my store and I saw nothing of the kind: presume he acquired accurate knowledge of Spanish at college: never saw him take anything to drink: do not know of his having been abroad: am not related to him: he was at church and Sunday school: at the Church of the Nativity, 2nd avenue: he was teacher at the time.

Wm. McArthur sworn.—Live in New York: am in the dry goods business: have lived there 25 years: known family of deft. over 20 years: known James since he was a boy: he was an associate of my boys: considered him a fit associate for them: the intimacy has been kept up more or less until this occurrence: he appeared peaceable, and the genteelst and best behaved boy at college: on one occasion I requested him to look to my boys and give them good advice: I had entire confidence in him at that time, and knew his family.

Cross-ex.—That was about 5 or 6 years ago.

Direct-ex.—He was in the habit of visiting me when he went to St. Mary's College, Maryland: had an ambition for getting along in his profession: he went from Mount St. Mary's to Georgetown College: was in Fordham 2 or 3 years: at St. Mary's 1 year—then at Georgetown: my boys went to St. Mary's also: they have all been at three colleges: it is not an uncommon thing for boys to go to 2 or 3 colleges: never heard it was in consequence of bad conduct.

Arthur Quin sworn.—Reside at Madison, N. J.: am 26 years of age: am a contractor: have worked for corporation of Paterson: was first acquainted with deft. at Mount St. Mary's College; he was there 6 or 8 months, 8 or 10 years ago: have never met him since: suppose he left there to get out: left 2 weeks after I did: was anxious to leave when I did: there is nothing disagreeable that I know of in this college: his character there stood very well: same as any student: he was my companion and friend: we were of the same society: have received letters from him since.

Cross-ex.—He was then 15 years old; have not seen him since farther back than 1851: he was not home up to that time: have known students to be at 3 or 4 colleges before coming to St. Mary's.

Wm. M. Smith sworn.—Have seen cards that merchants issue in shape of bank bills: have one that I have had in my pocket five or six years: have had others: never carried any bills of broken banks: it looks something like a bank note: has appearance of money: had but little of my own when I put that in my pocket: knew the deft. at college: we graduated in 1853: he was there more than two years before that: we graduated in July: he was first in the poetry class: I am a member of the bar in Philadelphia: assistant City Solicitor in the law department, Philadelphia: Donnelly's character was very good in the estimation of those who knew him: was exceedingly popular at college and occupied a prominent position in all the societies: his disposition was generous and liberal: nothing mean about him: I left Georgetown after graduating: always looked upon him as a medical student: have frequently corresponded with him and directed letters to the Janitor of the Medical College during the term: during our college term he was the Treasurer of 3 societies at one time, with a large amount of money in his hands: students may be received at Georgetown who have been censured and left other colleges: nothing illiberal or backward about him.

Cross-ex.—There was a Medical institution connected with the Georgetown college: don't know if he attended there: he was in the Washington Infirmary.

Wm. F. Buguire, sworn.—Am clerk in Mr. Cozzen's store; have known deft. over two years; remember of his going to the Sea View; a week or two afterwards he asked of me the retail price of cards; said he wanted them to sell to the guests; six packs of them make a bundle; he may have got twelve; each pack is done up separately; think I told him we retailed them at 50 cents; he was to pay me; nothing said about returning them, but would have taken them back from him: he was at our house almost every day; bore a good character; no recollection of his buying cards except on that occasion; he had rooms in 23d street for the purpose of practicing medicine, and slept there and sometimes took his meals down town in eating houses; he lived with his father about a month before he went to the Sea View; don't know why he left: have heard he has lived with Mr. Cozzen's.

Direct.—He had a difficulty with his father, who I have heard was a Catholic; he wanted to be a Protestant.

J. F. McQuade, sworn.—Live in Utica, N. Y.; left Washington a year ago last August; was a clerk in the Land Office, under Pierce; knew deft. in St. John's College; we were

intimate; he used to frequent my room; he boarded in the same house; some of our associates did the same; I did not have many associates; he was there off and on 3 years; nothing avaricious about him; don't mind a dollar more than any one else; was never around with him much—around town; he was peaceable; I came on here by request: felt an interest in him; I attended the same church with him in Washington.

John E. McMahon sworn.—Live in Buffalo; came here to give my evidence in this case; was acquainted with Donnelly: knew him in 1847 at college—St. Johns, Fordham: he was in my class 2 years: he left in 1850, or 51: saw him in Georgetown College in 53, up to time of graduation: my room was his place of resort when he came to the city: he and I had a difficulty: he did not treat another boy right and I commenced a fight with him: I was Private Secretary to Gov. Seymour: have corresponded with Donnelly: I was the Corresponding Clerk in the Post Office Department: after his graduation in July 1853 he was off, North and South: saw him regularly at church: he was absent a good deal from the city: I would frequently miss him two or three weeks: he would call on me and tell me he had been South or down in Maryland: told me after he had graduated he had been to Charleston: I attend the Catholic Church, St. Matthews: he used to be in my office between 11 and 12 o'clock.

Michael P. Mason sworn.—Live in New York: am an attorney at law: have known J. P. Donnelly 3 or 4 years past in N. Y. City: have seen him at the store of Mr. Cozen's: am in the habit of going there and visiting there: became quite well acquainted with deft.: never heard anything said against him: appeared very peaceable: was well thought of by those who knew him: he was a young man of quiet manners.

Cross-ex.—Saw nothing to bring forth his disposition: he was not an ugly (evil disposed) man.

Wm. J. Bunce, sworn.—Live at 74 Chatam street N. Y.: am a bookseller: I have known deft. 4 or 5 years: have been quite intimate with him: am partially acquainted with his associates: to the best of my knowledge, his character is as good as any man's. I ever saw or associated with: was proud to call him my friend: been acquainted ever since Mr. Cozens married his sister.

Cross-ex.—May have had associations I knew nothing of: never knew he had counterfeit money about him: had no such idea: I am a married man.

John E. McMenomy sworn.—Live in New

York: born there: am 20 years old: have known deft. 10 or 12 years: was a member of the same class at St. Johns: have also seen him occasionally in New York city: he had a good character at college and in New York: was not mean in money matters: he generally called on me in New York: at the store and also at my own house.

Francis J. Quinn sworn.—This (the fact of Donnelly being accused of the murder of Moses) was a great surprise to me.

The Court was here adjourned till 3 o'clock P. M.

3 O'CLOCK, P. M.—*Wm. F. Bugie recalled.*—Gave spurious money to Mr. Donnelly for nothing, also, as a kind of keepsake: had been received in my own store: gave him 2 \$3 bills: it did not come by his asking for them: one was on the Mercantile Bank, D. C.: cannot remember the other.

Cross-ex.—Did not give him any counterfeit money: was not aware that he had any of that character: did not tell him I thought the banks would come up again: it was utterly worthless I supposed: it is common to have such bills: I thought he might be able to get rid of them there.

Anna W. Smith recalled.—The key of the safe was about two inches long: one little piece not.

(The Diploma which deft. received upon leaving Georgetown College, July 12, 1853, was then offered in evidence.)

The Court, now adjourned until Thursday morning at 10 o'clock, on account of the absence of some of the witnesses.

THURSDAY MORNING, Sept. 24, 1857.

The examination of witnesses on part of the defence is again resumed. The evidence is principally, and almost entirely, in regard to the character of the prisoner previous to the murder, and not of sufficient importance to report. A large number of spectators are present.

Dr. William Van Buren, sworn.—Reside in New York; am Professor of Anatomy in the Medical College, am acquainted with Donnelly he was a student in the Medical University, and in my office; he was with me about a year; I should consider him an easy-going, good-hearted, frankly spoken, impulsive young man; have always heard him favorably spoken of, and judge him to be of good disposition: he is the last man that I should expect to have heard had committed a crime of this kind.—[Mr. Bradley here states the character of the wound, and the witness says that he thinks the man might have been saved with proper treat-

ment; there would be a large flow of blood: it might produce fainting within five minutes, or even less time: a person might rise and travel round the room. (Witness recites an instance of suicide occurring in New York, where a woman after cutting her throat, and fainting, as soon as consciousness returned crawled from the bed to the window and threw herself out.) A sudden loss of blood would or may for a time impair a man's intellect: I should think it impossible to engage in a struggle with a man thus wounded without getting blood on their clothes.

Cross examined—I know nothing of Donnelly's associations when out of my office.

Mr. Dayton—How long would it be before a man would sufficiently recover consciousness, after fainting from such a wound as you have heard described, to enable him to spring up from the bed and run around the house? A. He might recover in 20 minutes, and from that to two or three hours: and then would not spring up, but rise gradually.

Edward Murray sworn: I reside in New York, and have been acquainted with Donnelly 14 or 15 years: I am Inspector of Customs.

Thos. McArthur sworn: I reside in New York, and have known Donnelly 8 or 10 years: I first knew him at St. John's College and have been intimate with him since

Patrick Mulligan, sworn—Reside in Williamsburg: am acquainted with Donnelly, and know his family: have never known anything against him.

Anna Cousins, sworn—Donnelly went to the Sea View on account of his health: wanted to go somewhere; and seeing an advertisement in the paper of book keeper wanted at the Sea View, went there; at that time he was in the habit of taking part of his meals at my house, by the request of his father: Donnelly was 24 years old on the 25th day of May last: he is my brother and my only brother.

Council for the defence here rested, and the State resumed the examination.

Mrs. Smirh recalled—Moses told me in presence of Mrs. Bradford that he won \$55 of Donnelly.

Augustus Munter recalled—Heard Moses say he won \$55 of Donnelly: Mrs. Bradford was present.

Mr. Smith recalled—First saw Mrs. Bradford that morning as I came from Moses' room, she was in her night clothes standing in her room door: she stopped me and asked what was the matter: Moses said in the presence of Mrs. Bradford that he won \$55 of Donnelly.

The evidence in the case here terminated. The Court adjourned till 2 o'clock. The argument commences this afternoon.

Mr. Parker delivered his argument for the State this afternoon, and the Court adjourned till 1 o'clock, P. M. next day.

FRIDAY, Sept. 25th, 1857.

1 o'clock, P. M.—Mr. Bradley spoke for the defence, occupying the entire afternoon session.—Court adjourned till 10 o'clock, A. M.

SATURDAY, September 26, 1857.

10 o'clock, A. M.—Gov. Pennington spoke for the defence, and was followed by Mr. Dayton. The latter gentleman closed his argument about five o'clock in the afternoon, and Judge Vredenburg immediately charged the Jury, as follows:

JUDGE VREDENBURGH'S CHARGE,

The Def't Gentlemen is indicted for the wilful murder of Albert S. Moses. The case presents for your consideration four questions:—

First: Is the Albert S. Moses named in the indictment, dead?

Second: If he is, did he die by violence, at the place, and the time, and in the manner charged in the indictment.

Third: If he died, was that violence inflicted by the defendant.

Fourth: If it was, what, if any, was the degree of the def't's crime.

First: Is the Albert S. Moses, named in the indictment dead?

David C. Lent, testifies that he became acquainted with Albert S. Moses, in Tennessee, in the summer of 1856. That he came to the Sea View House on Tuesday evening, the 28th of July, 1857; and that he saw Moses there dead, on the afternoon of the 1st of August. This is sufficient if you believe it upon this point.

Second: The next question is—Did this person so called, and known, die by violence, at the time, at the place, and in the manner charged in the indictment.

The indictment charges that Albert S. Moses, on the 1st of August last, at Middletown, in this county, died by reason of a stab in his throat with some sharp instrument.

It is testified by the witnesses that this Sea View House, is in the township of Middletown, in this county, that on the morning of the 1st of August last, they found this same Albert S. Moses lying on his bed in No. 34, with a stab in the left side of his neck, bleeding very profusely, that he kept sinking for an hour or so, and then died. That the wound was inflicted by some sharp and pointed instrument, was about two inches wide at the external orifice, six inches deep, and going nearly through the neck, from left to right, severing in its course, the left jugular vein, and a branch of the carotid artery, fracturing the gullet, chipping off a piece of one of the bones of the neck, cutting the sheath of the carotid artery, and the cartilage of the windpipe.

That in the opinion of the Medical witnesses, this wound was sufficient to and did cause his death.

If you believe this testimony, you may consider the two first propositions as established by the State.

The first, and very serious question in this case is, was this violence inflicted by the def't, and this the State is bound to prove to you beyond all reasonable doubt. By reasonable doubt, is not meant absolute certainty. There is no such thing as absolute certainty in human affairs. For if a hundred persons swear they saw it done, they might be perjured or mistaken. But you are carefully to contemplate all the facts proved or given in evidence, and if from such review, you have a doubt of def't's guilt—if your inward conscience answers, I doubt if he is guilty, you shall acquit him. But if you have no doubts upon the evidence, it is your duty to say so,

and leave the consequence to Providence. The important question for you is, did the def't do it? This is a question entirely for your consideration. It is the duty of the Court to lay down the law; but of the jury to decide upon the facts. It is not the intention of the court to express any opinion upon the facts; and if they do it, it is not binding upon you—it is your conscience, and not the Court, that are to be satisfied. It is claimed by the State that this is proved directly by the evidence of the deceased.—The State claims that it is proved by the dying declarations of Albert A. Moses, that he was awakened by the force of this blow, and saw the def't in the act. Before you decide what these dying declarations were, and what weight they are entitled to, there are preliminary questions for your consideration. The Court have permitted these declarations to be given in evidence to you, but this is all they have decided. The credibility and weight of this evidence, it is entirely your province to decide, and in doing so you ought to weight all the circumstances under which these declarations were made, including those which were proved to the Court before they were admitted, and to give to those declarations of the deceased, only such credit as upon the whole you may think they deserve. In the first place you will recollect that these declarations were made by the dec'd when not under oath, and when he was not subject to a legal cross-examination. In ordinary cases you are aware that such evidence would be worthless, and not admitted by the Court. But the law makes this exception, that where the circumstances of the death are the subject of the dying declarations, and the party making them is suffering from a sudden, and extremely dangerous wound, creating in his mind a belief, without hope, of certain, and very speedy death; the law, considers a situation so solemn, as creating an obligation equal to that imposed by another in a court of justice.—You are then to consider in the first place, if Moses when he made these declarations was under the belief that he was at the point of death, and every hope of this world gone. In deciding this question, you will but look to the circumstances in which he was proved to have been placed. And second to what he said and did, and what was said to him. As to the circumstances in which Moses was placed when he made these declarations, were they such as to create in his mind a belief in almost immediate death. He had when undressed, received the wound of which we have spoken. It must have been driven through his throat with great violence. If awake at the time must he not have had some idea of its force, if asleep, would it not instantly awake him. And even if asleep, would he not when aroused to consciousness have some instinctive feelings of its depth and seriousness. Must not whoever did it, intended instant death; and would it not be natural for Moses, when he found the blood spirting from his throat, to believe that the person who did it, had effected his object. When he came to consciousness and found the blood gushing from his throat, upon the bed, upon the floor, upon the walls as he passed along—when he found that he could not stop it with his hand—when he found it spirting against the walls of the Hall, as he hurried past—when he stood near the door of 34, and that large puddle of blood was made—when he fled murder in the hall—when faint with loss of blood, he staggered back to 34, and threw himself on the bed,—saw himself all covered with blood; and the blood flowing from his throat—if you believe these are facts, would these not necessarily create in his mind a belief that every pulsation would be his last, and that certain and speedy death was

impending over him. These are antecedent to any declarations against the prisoner. If you believe that when Moses got on that bed in 34, from his condition, and that he said to the first person he saw, that he spoke under the sense of impending death, and that sense and belief of impending death, continued till he died there, then all the declarations he made afterwards as to the circumstances of his death, are competent testimony. If you do not believe that his first conversation with Smith and the others, who saw him before Dr. Connelly came, were made under the sense of impending death, you will consider his situation, what he said to them, and what they said to him, and what he did at the time of each declaration, and decide whether or not such declarations was made under the sense of impending death, and entirely right, all declarations which in your opinion were not made under such apprehension. If you believe that at his first declaration of who killed him, he was not under the sense of impending death, you will then inquire which, if any of these declarations, were made under such a sense, and give weight only to such, if any, as you believe were made under such declarations. And in doing so, you will take into consideration all the circumstances attendant upon each declaration. During all these times you will recollect he was continually sinking, and evidently approaching his end with speedy steps.

During these times what was said to him, and what did he say? He was heard to cry "murder" in the entry by Mr. Smith, when he first went in there. He said he had been stabbed, that he had been murdered, that his throat had been cut! Bernard McLaughlin saw him just after Smith, in 34, all covered with blood. He asked Moses if he felt like dying? He said he felt like dying. Henry Miller woke about 5 a. m., heard a stifled cry of "murder". He went in and Moses said he had been killed. Dr. Connelly told him, as you are to appear before your God and Maker, it is necessary for you to speak the truth, and nothing but the truth. Peter F. Schenck say he heard Dr. Connelly tell Moses he could live only a short time. Stador asked Moses if he was aware he could live only a few moments? Moses nodded his head and said, yes! Dr. Munter says Dr. Connelly told Moses he could not live very long—that he was going very soon before his God. Mr. Peter Stador when he went in felt his pulse, and told him he was in a dying position. He told Francis Bough, def't had cut his throat. Annie Smith, Connelly, and several others, told Moses he had but a few moments to live—to become reconciled to leave this world. Dr. Connelly says he told him he was about to die, and asked him what benefit it would be to him in another world, if he should die with a stain upon his immortal soul. Willson says, that five minutes before he died, the last words he said after complaints about his legs, after he said he knew he must die, and the sooner the better, after he had turned his face to the wall, and said let me die in peace, he made the declaration. Ald. Willson details. Was he then under the sense of impending death? In addition to this, he wished money sent to his mother. From all these facts, you are to decide if Moses at the time of these declarations believed he was at the point of death—had lost all hopes in this world, and was in fact in great peril of immediate dissolution. If you do not believe they were made under the belief of speedy and certain death, you ought to reject the evidence of these declarations altogether. But if you believe that these declarations were made by Moses, in the belief of impending death, then such as you believe were so made, are evidence,

and you give them such weight as you think they are entitled to. And then you will next inquire what these declarations really were.

The first person who saw Moses after he was stabbed, so far as there is any evidence, was the def't himself. Mr. Smith says, that he asked defendant when he was confined, how this occurred—defendant said he knew nothing about it. He said he had come up stairs for his shirt collar, and the first thing he knew, he met this young man, who rushed upon him and caught him by the coat and tore it—that Moses was running around the hall with his arms spread open, bleeding. What he said to Moses, or Moses said to him, if anything, does not appear. The next person who saw Moses, was Smith. He says he was in his room 28, when he heard a noise above, and cry of "murder," and in a few moments went up stairs, and found Moses in 34. He says when he went into 34, Moses put up his hands and called him by name, and said, he had been stabbed—he had been murdered—that his throat had been cut. S. asked him, who by, and what was the cause? Moses replied, Donnelly your book keeper. J. W. Round it would appear was the next person who saw Moses. He was aroused by the cry of murder, opened his door and saw Moses near his own door. He put on some clothes and went to room 34, Moses seeing him, cried, oh! I am murdered! Round said, by whom? He replied, Donnelly, the clerk. I said, are you quite sure of it? He replied, Yes, yes! Henry Milles, says he laid awake about five minutes, and heard a stifled cry of murder. Went to Moses room 34 and Moses said to him, somebody had killed him. Mrs. Smith says that as soon as she went up stairs, Moses said, oh! Mrs. Smith! Mrs. Smith, I am sorry. He said Donnelly had cut his throat. He said he woke up with him, (Donnelly) stabbing him in the throat—he jumped out of bed and then ran after him, and chased him towards the back stairs.—Heard Moses say until within ten minutes of his death, Donnelly did it. Francis Bough seems to be the next person who saw Moses. He says he met Smith coming down stairs about half past five, who told him to go to Moses's room. He went; asked Moses what was the matter. He said Donnelly had cut his throat. The next person who appears to have seen Moses after this was Dr. Munter. Francis went for him, and went up stairs with him; Munter says he was above with him some 10 or 15 minutes, when Donnelly came in, and as soon as he saw him he pointed to him and said, that is the man who done it; when Donnelly went to put on the plasters, Moses said, keep this man away, he has done enough for me, Munter asked Moses if he did it himself, Moses said no; Donnelly did it. The next evidence upon this subject, appears to be what took place after Dr. Connery came in. There were several persons present. Dr. Connery says, while Donnelly was putting on a plaster, Moses requested that he would not be allowed near him. The Doct. asked why? He replied, he has done enough. The Dr. told him he was about to die, and what a pity it was to accuse such a fine young man, and said what benefit would it be to him in another world, if you die with a stain on your immortal soul. He was then turning convulsively, and replied, that is the man who did it. Mr. Round was present at the time with Dr. Connery. He says that in reply to questions by various persons, and especially to those of Dr. Connery; Moses said repeatedly, with great emphasis, Donnelly did it. He said in reply to questions, in presence of Donnelly, that he had won of Donnelly the previous night \$55, and that Donnelly had murdered him to reclaim that money. As soon as Moses saw Donnelly, he said don't let that man touch

me; I have had enough of him. He repeated the words, Donnelly don't touch me. or don't let him touch me. He said to Mrs. Bradford, in a kind of meditative manner, as if thinking, yes; I think Donnelly did it. Upon Mrs. Bradford replying, do you only think so? he said, oh! I am sure of it. Upon some further remarks by her, he replied, I will tell you the whole story, and you can judge for yourself. He said he was asleep, and was awoke by some person cutting at his throat. That he thought it was done with a pen knife, and said if you will see, Donnelly's knife you will see, I think, the weapon that did it; upon ascertaining that it was not the pen knife, he said, well, if not that, it was something else. He then said he jumped up and struggled with the person,—he caught hold of him, and he broke away. He said if you doubt me, madam, look at the marks of my bloody hands on the door. He said he followed the person out of the room, along the hall, after he had broken away from him in the room, and ran nearly to the head of the back stairs—he then felt weak, and fainting, and Donnelly went down stairs. Alderman Willson, says before Connery left the room, he told Moses he thought he could not live, and ought to prepare himself for another world. He told Willson five minutes before he died, that Donnelly stabbed him. He asked him what Donnelly? He said Donnelly the clerk. Willson said, do you mean the man with the long curly hair? He said yes, the man with the long curly hair. Willson said, how could you tell it was Donnelly, wasn't it dark? He said no, it was not dark, it was light enough for me to distinguish his features and his person. He died in about five minutes after this. His impression is that he jumped out of bed, and chased him. Wm. W. Smith says Donnelly came into the room a short time after Dr. Connery came in, and as soon as Moses saw him, he pointed at him, and said, that is the man,—keep him away—don't allow him to come near me. Smith says he was there off and on till he died, and heard Moses say during these times, fifteen or twenty times, after Connery came, Donnelly the Book-keeper had killed him. He said the first thing he knew that morning, he woke up by the force of somebody stabbing him. The first thing he saw was Donnelly.—He jumped out of bed—ran after him—caught hold of his coat and tore it. Staden says after Connery came in he heard Moses say Donnelly, the Book-keeper, cut his throat. Before you take this evidence, you are to decide whether the dec'd did say, after he was wounded, and under the sense of impending death, that the def't killed him. If the evidence had been merely that Moses said the def't had murdered him, or cut his throat, it might be very dangerous evidence—for, not having been subjected to a cross-examination, we could not know whether he saw the def't at the time, or only supposed he had done so. But here Schenck testifies that Moses said it was daylight—he was laying on the bed in 36—he was asleep, and he woke by force of the blow. He said to Mrs. Bradford, that he was awakened by some person cutting at his throat—that he jumped up and struggled with him—that he caught hold of him, and he broke away from him—then he followed him out of the room, along the hall, after he had broken away from him, in the hall, and ran nearly to head of back stairs and Donnelly went down stairs—he felt weak and returned to 34.

If you believe Moses did not say that, but only supposed or suspected it was Donnelly, this evidence ought to have very little weight. But if Moses did say he saw Donnelly in his room as he woke and chased him out into the entry, then the next inquiry for you to make is, is this statement of Moses in fact true.

1st.—Could this strong fact, that he saw the deft before him as he woke, and chased him into the Hall have been importantly qualified by a cross examination. If you believe it is, you ought to give but very little weight to it, for the reason I have given above, viz: that the whole statement might resolve itself into the mere expression of an opinion. Moses for from one to two hours while he lived, was, as it appears carefully cautioned and questioned. Was he not, in substance subjected to a cross examination? If you believe that after any cross examination it would have appeared that Moses intended to say, he saw deft in his room when the fatal blow was struck, the next question for your consideration is, was Moses sincere in making that declaration? Did he himself believe it? In deciding this question, you ought also to consider the whole history of this thing from the first alarm till he died. But it is suggested, that he did not at the time of his death, feel the obligations of the dying hour—that he did not make these declarations under a belief of a future state of rewards and punishment. One holy sentiment certainly filled the heart of the dying boy, he memory of his mother. Can you say that Moses did not believe in a future state of rewards and punishments? Has this fact been shewn to you? It is suggested, First, that he might have been laboring under some mental delusion, Second, that he mistook the identity of the person he saw. Was he laboring under any mental delusion? How was it from the time that he cried murder in the hall till he died? During this period, do his acts show any thing like a wandering mind? When he was stabbed, was it not that of a perfectly sound mind to pursue the person who struck, and in the hall to cry murder? Was it not also so when he found the party had escaped, to return to his own room. Did he not give a perfectly rational account of it afterwards? As regards the money, its place of deposit, its amount, to whom it belonged, the giving of his own to his mother—this detail of the transaction—all he said and did, were they not perfectly rational? From the time he woke, till he died, is there any evidence of false visions floating through his brain? Did he mistake anybody? Did he not know every body, as usual? If there is no delusion after the first impression on waking, did he fall into a delusion at waking? It is suggested, this might be in two ways. First, by getting a false impression between perfect sleep, and perfect waking, like those impressions we get in a morning dream; in fact, that he thought it was the deft before he awoke fairly, and had it so strongly impressed on his mind, that nothing afterwards could erase it. This is a question entirely for your consideration. It is not for the Court to say it is impossible, but you are to look through all the facts, and draw your own conclusions. In deciding that question, you ought to look to all the circumstances. He was a young man, not yet 19—no evidence of any bodily or mental malady. Is it at all to be supposed that before the blow was struck, he dreamed he was struck, and struck by the deft? Would not that be a very violent assumption? Then if he did not dream he was struck, and struck by deft, before he was actually struck, then he must have got this idea, at, or after he was struck. But suppose Donnelly to have been mixed up with his first consciousness, what would be the quick effort of such a blow upon a sound mind and body? would it not immediately wake him up to quick and perfect consciousness? With all other respects, did he not wake to realities. Why should this be delusion, when every thing else was reality? If Moses could have been alive and testified here on this point, his evidence would be liable to the same objections. Everybody

who testifies, is liable to mistake one person for another. All we can do is to weigh the evidence and carefully compare one piece with another.

The defence says that the person who struck the blow was not the deft, but some one else. Was it done by Moses himself? Moses tells one of the witnesses that it was not himself. Was he likely to commit suicide? Physicians say it was not the blow of a suicide. Moses says it was the peft. He saw him. Supposing Moses to be a seep in 36 and struck by some person stealing into the room, what would be the circumstances? There would sleep the unconscious boy; by his side would stand the assassin, with his dagger drawn, and meditating how to strike the mortal blow. Striking his victim at that hour, and in that place, it was necessary to produce instant death, or discovery was extremely probable. The carotid artery is there—if struck, the victim dies before he wakes, or speaks. Instead of the red arterial blood gushing from this large artery, depriving the victim of speech, and sinking in death in a few pulsations, he rises comparatively strong, springs out of bed, confronts his murderer, and ready to battle for retribution, and for life. What would be the effect of this state of things? The first cry of murder would bring witnesses to the room. If he stood, he would be covered with blood. Flight is the only safety. If he can get out of reach, Moses may die before he can tell who struck him.

Moses says deft was at his bed side when he was struck. The deft says he met Moses first at the head of the stairs. The deft, so far as is shown, was the first one who saw Moses that morning. He told Smith, after he was arrested, that he knew nothing about how this occurred; that he had come up stairs for his shirt-collar, and the first thing he knew, he met this young man, who rushed upon him, caught him by the coat and tore it. He says Moses was running around the hall, with his arms spread open, bleeding. This must have been before Smith saw him; before Round, or Miller, or Mary Lanner, or Ellen Hurley, or Francis, the porter, saw him. We have it then by the statement of both parties, that before Smith heard the alarm, he and Moses were together. The deft says he met Moses at the head of the stairs, coming from towards his room, and towards him, bleeding; that therefore he was frightened and ran. At the very moment of the alarm, then, he and Moses were together. Def't says at the head of stairs, Moses says, he was in his room. Did Moses first see the deft at his bed-side, or at the head of the stairs? Let us test their statements by the attendant circumstances. If Moses's account be true, we would expect all the attending circumstances to agree with, and support his statements. If the deft's be true, we would expect them to agree with, and support his statement. If you believe that when this blow was struck, Moses was lying on the bed in 36, then whoever did this, must at this time have been standing by his bed-side, and intended instant death. Whoever did this, what would he do when he found Moses up in self-defense. No blood must be on his garments. Would not his policy be to retreat, with the expectation that in a few seconds the loss of blood would do its work, and Moses die, and leave no sign behind him. If Moses followed, must he not flee, or be covered with blood. When he found Moses following into 34, might he not begin to think he had missed the larger blood vessels—That it might be uncertain how long Moses might live, and that he might tell who did it—When he found Moses pursuing him into the entry, and crying murder, would he not fly in panic and terror from that hall. The person who did this must have had a weapon—the weapon, if left, might be

tray its owner, or if found on the prisoner, tell who did it. It must be disposed of soon, and could it be secreted in the water closet—thrown into the river, or buried in the sand. How far do these acts, apparently necessary to him who did the deed, correspond with what we know of the acts of the def't. If the account of the def't be true, that he only first saw Moses at the head of the stairs—how then would we expect him to have acted? would he have acted as if what Moses said was true. He says he met Moses at the head of the stairs, coming towards him from his own room, with his bloody hands stretched out; that thereupon he was panic stricken, and fled. So far as the def't's statement goes, Moses did not accuse him of doing it. He was a physician, accustomed, we must presume, to see wounds and blood. Why, when he met Moses bleeding, without knowing how deep the wound was, and whether very dangerous or not, and without being accused, did he become panic stricken, and fly. Should we not rather expect he would examine the wound, and inquire how it happened. If he was in Moses's room, and did the deed himself, it is easy to understand why he should be panic stricken, and fly.

But suppose he was first shocked and alarmed, he met Smith in his flight on the 2d floor, who inquired of him repeatedly, what was the matter. If his account be true, what should we have expected him to do? Would he not have said, I saw Moses bleeding up stairs, let us go and see what the matter is. Would he have been so entirely bereft of his reason by panic and terror, that he should do no such thing. If he had himself inflicted the blow, and left Moses weak and faint, crying murder in the hall, would he have gone back with Smith. If he had only met Moses at the head of the stairs, would he have let Smith go up stairs alone, and left Moses to bleed to death, perhaps for want of his assistance, so far as he could know. But if he knew when he stood with Smith on the porch, the nature of the wound, then might he not exclaim in reply to Smith's question, what is the matter; he's dead; he's dead. Why did he, the only physician in the house, so far as appears—he who knew he had left Moses bleeding in the Hall, suffer Smith to go up stairs to him alone. Moses had not spoken, as he knew, concerning him. Why run down from the porch, and continue his flight (if you believe the evidence) to gentlemen's water-closet, thence around and by the path under the dining-room windows, there picking up something; then past the kitchen; then to the servants water-closet; then over the fence between the Sea-View and Schenck's, and then down to the river and around by the plank-walk to the Sea-View. If he did the act, we may understand it, for he must get clear of the weapon. If you believe that he picked up something in the grass, what was it? If his flight was panic at merely seeing blood, what was there on the grass that could so divert his attention? But why continue his flight? It is suggested that he was running then to Schenck's for assistance. But who

did he look for? Who did he find? At which door did he knock? Who did he see? It is suggested he went for Dr. Munter. But why run for Munter? was not he himself a physician. It is suggested he went for instruments; but would he run away from his patient on an uncertain expedition for instruments, without first examining the wound to see what instruments he would want, or if he would want any, and in the mean time leave his patient to bleed to death. But if he was merely running for help or instruments, or a physician, why stop and try to get in the servants water-closet? If he had picked up the dirk on the grass, and wanted to get clear of it, we can understand it; but how can we understand this upon the hypothesis of the truth of his own statement. Can they be explained upon any other hypothesis than the truth of Moses's statement.

Now if def't had really only met Moses in the hall bleeding, and had not been chased from his room by him, if the def't had ran only to Schenck's for instruments and assistance, what would he have done when he got back to the Sea-View? Would he not instantly have rushed up stairs to Moses to render him medical aid, and staunch his bleeding wound? Did he go right up? Did not Smith, and Munter, and Francis, leave him in the office? Why take time to change his clothes, when he had every reason to believe, according to his own statement, that dec'd was bleeding to death? When Dr. Munter came to the office, on his way to the room of Moses, did the def't ask him if he had his instruments, or consult, or go with him? Are not all the acts of def't after alarm, such as we would expect them to be, if Moses's statement were true, and he had done the act?

The other circumstances have been gone over so fully by the counsel on the respective sides, that I shall not detain you with any review of them. If upon the whole case, you have any reasonable doubt that it was the def't who did this, you should acquit him.

The def't has proved himself to be a man of education, and of unexceptionable character. Where there is any doubt of the guilt of the def't, it should be taken into consideration by the jury, and incline the scales of justice to the side of mercy. But where the facts are clear, it is no justification, and should not weigh down otherwise perfectly satisfactory evidence.

If you believe the defendant did this, the next question for your consideration is, what is the degree, if any, of his crime?

Our statute provides that all murder, by any kind of wilful deliberation and premeditated killing, shall be deemed murder of the first degree.

It is not necessary that the premeditation

or deliberation should be for any specific period of time before the fatal act. It is sufficient if the thought exist the moment before, and at the infliction of the mortal blow.

If the def't came up when Moses was asleep, and with a deliberate and premeditated determination of killing him, for however short a time before he had entertained such intention, plunged this dagger in his throat, he is guilty of murder in the first degree.

I have finished, gentlemen, what I have deemed it proper to say upon the present occasion. The final crisis of the case is now with you. Weigh all the circumstances with your most careful attention. I am satisfied you will do your duty to your country, to the def't, and to your oaths; and may Omniscience guide you to a true result.

At the conclusion of the charge Mr. Bradley, counsel for the prisoner, rose and asked the Court to charge upon the following points:—

1. We ask the Court to charge the jury that if the jury are satisfied that Moses had no belief in God and in a future state of rewards and punishments, they must disregard his dying declarations.

To this request the Court replied, by charging that such was the law, but that the jury must be satisfied by the evidence that such is the fact. The law will presume that he had such belief until the contrary is proved.

2. We ask the Court to charge the jury that the fact of Moses not restoring the money, which he said he had won at gambling, to its rightful owner in prospect of immediate death, is evidence of a depraved heart, and goes to show that his declarations are not entitled to belief; also that the fact of his making no reference to a future state, by smiling in derision when spoken to on that subject (if the jury believed he did so) is evidence of the like character and effect.

To this request the Court replied, by charging the jury that they would give these facts just such weight as they thought they deserved in reference to the credit due to the statement of Moses. The weight of these facts is a question of which the jury are the sole judges.— [The defendants except to this charge.]

3. We ask the Court to charge the jury that if they believe the evidence of Munter with regard to the length of time that Moses had been stabbed, the evidence of the defendant's guilt is insufficient.

The Court, in reply, charged that if the jury believed that Moses was stabbed two hours before the alarm, there certainly was no proof that the defendant was there at that time; but they were to decide whether they would believe this statement in the face of all the facts of the case.

CLOSING SCENES.

We here give a resume of the last day's proceedings, and the conclusion :

As we stated last week after the close of the testimony on Thursday forenoon, the Defence rested their examination. Mr. Parker for the State commenced speaking at 2 o'clock, and occupied the afternoon. His remarks had a telling effect.

At the close of his speech the Court adjourned till 1 o'clock, P. M., next day, in order to give a Juror opportunity to pay the last sad rites to the dead, in attending the funeral of one his children.

Joseph P. Bradley, Esq., opened the case for the defence. His argument was learned and ingenious; dealing with the overwhelming mass of evidence against the prisoner with a master hand, and occupying the entire afternoon in its delivery.

On Saturday morning, the 26th, at 10 o'clock the Court was opened—the excitement increasing as the trial approached its termination.

Governor Pennington commenced his argument immediately after the opening of Court, appealing to the Jury to remain uninfluenced by the opinions of the press or the remarks of people. He argued the incompatibility of the evidence with a belief in the guilt of the prisoner, alluded pathetically to his previous excellent character, and the lack of positive evidence against him, and pointed to some seeming discrepancies of the testimony, and appealed to the sympathies of the Jury, warning them at the same time of the danger and guilt of condemning an innocent man.

The family and the prisoner were all in tears during the conclusion of this speech, and the family left the Court-room at its close.

Hon. W. L. Dayton commenced his argument for the State—the final summing up. It is but just to say of Mr. Dayton that he was laboring under indisposition.

After he had spoken about one hour and three quarters, the Court adjourned to meet again at 3 o'clock.

The throng which filled the Court room at the hour of afternoon commencement was

if possible, more dense than at any time before.

Mr. Dayton occupied nearly two hours in finishing his argument, and held the assembly in wrapt attention to its close.

The Judge commenced his charge to the Jury immediately, and occupied until nearly dark in its delivery.

At the conclusion of the charge, Mr. Bradley arose and asked the Judge to amend it on certain points, and made the following exceptions, which he read :

First : We except to the charge of the Court, in that the Court therein argued the facts of the case to the Jury, against the prisoner at the bar.

Second : We except to the charge of the Court because the Court gave a partial view of the evidence against the prisoner, and omitted the circumstances in his favor.

Third : We except to the charge of the Court on the subject of giving the defendant the benefit of every reasonable doubt, where in the court charged that if the Jury were satisfied in their own consciences that the defendant was guilty, they must find him so—if they in their own consciences had a doubt of it, they must acquit him.

The Jury were then given in charge of the officers and sent out to make up their verdict, the Court remaining in session, and most of the audience in their seats. After an absence of about one hour and a half, a messenger was sent in saying that they had agreed, and they were forthwith brought into Court, and the prisoner sent for. Having taken their seats, and the prisoner being in his place, the bell was tapped. Immediately the greatest commotion was heard in the streets, and an indiscriminate rush was made for the Court House.

After the confusion had subsided, the roll of Jurors was called, and the prisoner and Jury were requested to stand up and look upon each other.

The acting Clerk then put the question : —“Gentlemen of the Jury, have you agreed upon your verdict ?”

Foreman—“We have.”

Clerk—“Gentlemen of the Jury, how say you—do you find James P. Donnelly, the prisoner at the bar, guilty or not guilty ?”

Foreman—“GUILTY OF MURDER IN THE FIRST DEGREE, ON THE FIRST FOUR COUNTS OF THE INDICTMENT, AND NOT GUILTY ON THE FIFTH.”

The Jury were called and respectively assented to the verdict, when the Clerk said—

“Gentlemen of the Jury, hearken to your verdict as the Court has ordered it to be recorded. You say that you find James P. Donnelly guilty of murder in the first degree, on the first four counts of the indictment, and not guilty on the fifth, and so say you all.”

Jury—“We do.”

The prisoner betrayed no symptoms of emotion upon hearing the verdict; and his Counsel immediately commenced preliminary measures for a new trial on the ground of the exceptions as given above.

The Jury were then discharged till the second Tuesday in October, and the Court immediately adjourned till Monday morning.

During this time the room had been remarkably still, the breath of the audience seeming almost suspended. When the verdict was generally understood, all breathed easier, but no unseemly signs of approval were manifested. The prisoner, with his load of woe, was looked upon with pity. He, however, bore himself with his usual stoicism, and listened to the conversation of his Counsel.

The tired Jurymen left for their respective homes, and this tedious and exciting trial was at an end.

We learn that after Donnelly retired to his cell he gave way to a burst of grief, and walked the floor all night. He snatched a little repose about daybreak, but the terrors of his situation seemed at last to have to have broken upon him, and affectually deprived him of all disposition for rest or enjoyment.

His stricken father, it is said, was delirious during the night, and one of his sisters aroused from swoon only to fall into another.

The prisoner bitterly accuses the Court of charging unjustly. Of this, however, others will judge as well as himself; the evidence and the charge are before the public.