

New Jersey Court of Errors and Appeals

DANIEL ACKERMAN,

Plaintiff in Error.

vs.

THE STATE OF NEW JERSEY,

Defendant in Error.

*Sur Indictment
for Murder, &c.*

BRIEF OF EUGENE EMLEY,

ATTORNEY FOR THE STATE.

The plaintiff in error, on November 4, 1895, was indicted by the grand jury of Passaic County for 10 the crime of murder. On February 13, 1896, he was tried in the Passaic Oyer and Terminer and convicted of murder in the first degree, after which the court proceeded to pass judgment upon him. On April 1, 1896, a writ of error was issued out of the Supreme Court, but was afterwards dismissed under the decision of this court in the case of Kohl vs. the State. A second writ was thereupon issued out of this court, and it is in obedience to this last mentioned writ that the proceedings 20 and judgment below are now before the court for review.

The state labors under some difficulty in defending the judgment of conviction, not being informed on what particular error or errors the defendant relies for a reversal; for, while it may be true that he is entitled under recent legislation to

a review of the whole case, yet it is still his duty to point out in advance the particular part of the case to which he intends to take exception. The only specific assignments of error here relate to the admission of testimony, and they seem so manifestly trivial that they do not call for serious argument. It appeared that the defendant was asked upon his cross examination whether or not he made certain admissions to and in the presence
 10 of three different persons, to which he answered in the negative; and in rebuttal the persons mentioned were called by the state to testify to such admissions, and thus not only contradicted the defendant but also enabled the jury to determine the condition of his mind at the time the blows were struck which resulted in the death of his wife. To assert that such testimony was illegal, is to ignore the most rudimentary principles of evidence. These are the only specific assignments of error,
 20 and they being utterly without merit, the state is, as I said before, somewhat embarrassed to know what else for argument there is in the case. I suppose, however, the insistment will be that the verdict was against the evidence and contrary to the law as declared by the court. Let us see.

The facts established upon the trial showed that, on the eleventh day of July, 1895, Mary Elizabeth Ackerman, the wife of the defendant, received a fatal stab in the neck with a knife in
 30 his hands, from which she almost immediately died. At about eight o'clock in the morning of that day they met upon the track of the New York, Susquehanna and Western Railroad Company, and, after proceeding together for some distance up the track, the defendant assaulted her with a

heavy club, and kept on striking her "as many as ten or a dozen times" until she went down on the ground, and then "he got down on top of her," and stabbed her in the neck with a knife, severing the jugular vein. She walked a short distance and fell dead from the effect of the wound. They were seen going up the railroad track by Moses Edwards and Samuel Henderson, both of whom were witnesses for the State, and their attention was further attracted to them by her cries of distress. They both saw the defendant inflict the blows with the club; they both saw Mrs. Ackerman sink to the ground under the crushing violence of the blows; they both saw the defendant fall upon her and sit astraddle of her body; they both saw him—his back was towards them—"make all the motion with his hand (necessary to the striking), as if he was very busy;" and they both heard her exclamation "Oh! oh! oh!" It was at this point that these witnesses said to the defendant, "have you killed her?" or "have you killed the woman?" 10 and that he replied, "*yes, I have killed her* and now I will kill myself." The testimony of these two witnesses will be found in the printed case on pages 4 to 20.

The murder was committed at about eight o'clock in the morning; at half-past four on the same morning, or about three and a half hours before the murder, the defendant called at the house of one Wesley Miggins, not far from the scene of the murder, and asked him to "let him have a 30 knife," saying that he wanted to cut a cane, and five minutes after that he said to Miggins "I have got your knife here and am going to cut a cane, and I will go and cut it and come right back."

He never came back. This knife was afterwards identified as the one used upon the deceased. (Case, p. 31). The interval of time, between his departure from Miggins' house and the murder, was spent by the defendant in the woods in the neighborhood watching the movements of his wife, and, while lying in wait for her, he saw her go up the railroad and then concluded to "go down and meet her." He had already provided himself
 10 with the club and the knife, and, thus armed, he joined his wife upon the railroad and walked with her to the place where he struck her. (Case, pp. 45 and 46).

His claim upon the trial was, that, after having struck her once with the club, he had no recollection of anything that afterwards took place. "I remember hitting her with a stick, and she grabbed me, then she went down, and asked me to let her up, and I did; and she grabbed me again,
 20 then went to tear at my face the moment I let her up, then I kind of gave her a little jerk with my hand, and down she went again, and after that she grabbed me again there in the hand with her teeth, and took a piece out, *and after that I don't remember any more what was done.*" (Case, p. 46.)

In this claim of forgetfulness he was flatly contradicted by three perfectly disinterested witnesses, Recorder George B. Senior, Coroner John S. Goodridge and James Dougherty. According to the
 30 testimony of these three witnesses, the defendant not only admitted that he cut his wife with a knife, but he described the kind of a knife minutely. "I asked him if he struck his wife with a club and he said he had, and I asked him how often, and he said once that he could remember—he knocked her

down; I asked him if he cut her with a knife and he said he had, and I asked him what kind of a knife, and he described it. Q. Did he say anything about where he used the knife upon her? A. In the neck." (Case pp. 74 and 75.) Furthermore, it was not denied that the defendant attempted and almost succeeded in killing himself. This, then, was substantially the case made by the state. It lacked none of the elements of murder in the first degree. Indeed, as the judge said 10 in charging the jury, "you will have the elements clearly pronounced—the lying in wait, the wilful, deliberate and premeditated killing." There was, at the time he gave the fatal blow, the clearly formed purpose to take her life; the weapon that he used was a deadly one, and he used it on that portion of her body which was most vulnerable to fatal attack. Besides, there are the responses made to Edwards and Henderson. To their inquiry "have you killed her?" he said "yes, I have 20 killed her." She was not dead, still quoting the language of the trial judge; death did not show him that he had killed her, and what led him to answer, "yes, I have killed her." Was it his consciousness that that was the purpose for which he struck the blow and that he had given the blow in an effective place? What else do all things indicate, to what other conclusion do they lead, except that the defendant wilfully, deliberately and with cool and malicious premeditation took the life of 30 his wife.

The only defence on the trial related to the grade of the crime. In his charge to the jury the judge said, "without intending to infringe in the least on this province, which belongs to the jury,

yet in what I have to say I shall treat the case as one in which *guilt is clear*, and in which the only question is as to the grade of the offence; for I am unable to take any view of the testimony in this case, or to see how any view can be taken of the testimony in this case, which is consistent with entire innocence on the part of the prisoner." And, thus it was that, under the evidence in the case, the question of guilt was conclusively settled.

- 10 It was "conceded that the defendant's wife came to her death through a wound inflicted by a knife in his hands, the knife having been used to give her a fatal stab in the throat." The only question, therefore, to go the jury related to the grade of the crime. Was it murder or manslaughter, and if the former, of what degree? The distinction between these crimes and degrees of crime were admirably pointed out to the jury and the law relating thereto was most clearly ex-
- 20 pounded. The submission of the question was impartial and fair, and it was left wholly to the jury to say, from the evidence, what the grade of the defendant's guilt was. They found it to be murder of the first degree. The defendant endeavored to reduce his offence to a lesser degree, but any one after reading the testimony must say that his attempt was a melancholy failure. It consisted in showing that some two years before the commission of the crime he had begun to suspect the
- 30 fidelity of his wife; that frequently thereafter she had been guilty of adulterous intercourse with one Edward Utter; that he, the defendant, had at different times remonstrated with her to no purpose against the immorality of her conduct; and that on the morning of the murder, while concealed in the

woods, he saw Utter and his wife join each other for the purpose, as he suspected, of repeating their unlawful practices. His whole effort to thus reduce the degree of crime was confined to his own description of the transaction, so that it may be well to quote his testimony.

"Thursday morning I went out to this spring and got a drink, and then went over to Mr. Lindie's, and I was staggering around as bad as a man that was intoxicated, and I asked Mr. Miggins if 10 he would let me have his knife to cut a cane, and he told me yes; he told me to come in and sit down; I went in, and I felt so bad that I couldn't dare sit still; and I saw a paper of tobacco there, and I said 'I am going to help myself to a chew of tobacco,' and he said, 'All right, Dan;' and I said 'Here is a little knife laying there, it is good enough to cut a cane;' and he said, 'Yes,' and I took it and went to cut myself a cane, I was so weak; I wanted it to guide me; and I saw Edward (Utter) after that coming out of his father's house again; and 20 he was looking down that way quite a good while before he had seen my wife. After a while she went out of the house to him, waved her hand at him this way, and it wasn't only a little while when he went behind the house and towards the swing gate; and so he came back of the house with her. I took a drink, and then came out and stayed in the brush, and at this same time, while he stayed there, there were three ladies passed him, and while they were passing him he was standing 30 there, and it was only a few minutes after they went by him before I saw my wife start down that way. He stood on the bridge, and she went down there by him; I stood on the hill looking at him;

she happened to look around, and I think she must have saw me, for she started right away from him; he started one way and she the other; she went up the railroad and he through the woods. Then I made up my mind she had seen me; I said to myself I will go down and meet her, and have a talk with her; I went down, and met this old gentleman down there—Mr. Edwards—I met him down there, and I said good morning to him, and
 10 he said ‘Good morning;’ but the boy, I don’t remember seeing him at all then. Walking up the railroad after I passed Mr. Edwards, I said to her, ‘I want to know if you are going to stop these capers and behave yourself?’ and she wouldn’t give me no answer until we got up the railroad a little ways, and I put my hand upon her shoulder that way, and I said, ‘Why don’t you talk to me?’ With that she gave me a shove; she didn’t want to talk to me, she said, and then told me that, ‘I
 20 have been with him, and I will go with him whenever I please.’ Then I remember hitting her with a stick, but where I hit her I can’t tell you; I remember hitting her with a stick, and she grabbed me, then she went down, and she asked me to let her up; and I did, and she grabbed me again, then went to tear at my face the moment I let her up, then I kind of gave her a little jerk with my hand, and down she went again, and after that she grabbed me again there in the hand with her teeth,
 30 and took a piece out, and after that I don’t remember any more what was done.” (Case, pp. 45 and 46).

This is all there was to the defence and the facts thus sworn to by the defendant were submitted to the jury with the instruction that, if the jury be-

lieved them to be true, they would be warranted in finding the defendant guilty of manslaughter only. I cannot do better than quote the language of the charge, relating to this aspect of the case. After stating the substance of the defendant's story, the court below said:

"Now, if you believe that to be the substantial truth, then I say to you that statement will warrant you in finding this defendant guilty of manslaughter only; but whether you shall find him 10 guilty of that least form of crime will depend upon how you answer these questions with reference to these circumstances.

"First, had he, when he sought the interview with his wife, a purpose to kill her? He says he had not; the state claims that he had; that when, at four o'clock in the morning he borrowed this knife, he then had the purpose to kill her, and that he was lying in wait and searching for an opportunity, and that he joined her upon the rail- 20 road track in order to execute his purpose. If you believe that he had such a purpose, then this crime is not manslaughter; it is murder. But if you believe that he had no purpose to kill her when he sought that interview then you come to the next question which you have to answer, and that is: Did he strike the fatal blow in the heat of blood? I don't know that I can define to you better than you understand it yourself, what the 'heat of blood' means. It is a sudden, hot flash, to which, owing 30 to the infirmity of our natures, we are all more or less subjected. It is a sudden outburst of passion — 'hot blood,' as the law defines it. If he did not strike that blow in hot blood, then it is not manslaughter; it is murder. If what occurred did not

arouse his passion, if he was calm and cool then it is not manslaughter; it is murder. But if you believe the blow was struck in hot blood, then you come to the next question. Was that passion aroused upon reasonable provocation?

“He says that there was the belief in his wife’s infidelity; that there was her refusal to speak to him; that when she spoke to him there was the declaration that she had been unfaithful
 10 to him, and that she meant to continue in the course of her infidelity; that thereupon came the blow with the stick, and the struggle, in the course of which she scratched his face and bit his hand; and that, aroused by all these circumstances, not from any badness of heart, but from an infirmity of our nature, his passion was so aroused that he gave the fatal blow. Now, that is for you to say; if that provocation was not reasonable, then it was not manslaughter; it was murder. If you
 20 think that, in view of the fact that he said he had long known or believed in this infidelity; in view of the fact that it was his wife with whom he was contending; in view of the fact that he had himself, with a stick, struck the first blow; in view of any other circumstances in the case, you think that provocation was not reasonable, so that his passion was not the result of a common infirmity, but the result of a bad heart, then it is murder, and not manslaughter; so, that then, gentlemen, you see,
 30 to get at this verdict of the lowest grade of crime, you have to take the prisoner’s statements as substantially true, and then you have to find that, without a previous purpose to kill, and upon reasonable provocation, in the heat of blood, he

struck the fatal blow. If that is your view of the case, then your verdict will be that he is guilty of manslaughter."

How could anything be more clear than this; how, with such an exposition of the law and such a presentation of the facts, could a jury fail to comprehend the precise question which they were to answer? They could not go very far astray, nor grope long in darkness; their answer must have been and was the judgment of minds full of 10 understanding and free from all doubt. It is difficult to conceive how, under the circumstances related by the defendant himself, they could have conscientiously found a verdict of manslaughter. But, opposed to and in startling contradiction of the defendant's story, stands his conduct during the three or four hours immediately preceding the murder. There is the fact of his deliberate preparation; the untimely call at Miggins' house; the procurement of the knife under a false and hollow pretence; the securing of the club; the stealthy ly- 20 ing in wait; the unprovoked attack; the savage and fatal stab; and the instantaneous reply, "Yes, I have killed her." All these are facts which, I regret to say, are irreconcilable with the crime of manslaughter; irreconcilable with the theory that the defendant's act was the result of a sudden and justifiable passion; irreconcilable with any other view of the case than that reflected in the verdict of the jury, that he is guilty of wilful, deliberate and premeditated murder. And, while the duty which 30 the law has cast upon me may be a painful one, and the consequences may be of great and serious moment to the defendant, yet I feel justified by

the evidence and by the law, in maintaining that the defendant was properly convicted after a fair and impartial trial by a jury of his countrymen. It is my duty, therefore, to ask that the judgment of conviction be affirmed.

Dated February 27, 1897.

EUGENE EMLEY,

Attorney for the State.

Base March Term 97

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vs.

THE STATE OF NEW JERSEY,

Defendant in Error.

Sur Indictment

for Murder.

BRIEF OF Z. M. WARD, COUNSEL OF PLAINTIFF IN ERROR.

PRELIMINARY STATEMENT.

The defendant Daniel Ackerman, was indicted by the Grand Jury of Passaic County, in the September Term, 1895, for a murder committed July 11, 1895, at Bloomington, Passaic County.

The indictment was tried in the January Term, 1896, and resulted in the defendant being convicted of murder in the first degree, the fifteenth day of February, 1896, and sentenced by his Honor Jonathan Dixon, Judge of the Passaic Oyer and Terminer and General Jail Delivery, before whom said indictment was tried, to be hanged April 25, 1896.

The proceedings were removed to this Court by writ of error, and due return made thereon, and the whole case duly certified by his Honor Jonathan Dixon, sent up, in lieu of a bill of exceptions.

Counsel contends that the conviction was erroneous for the following reasons:

1. The Court admitted illegal evidence in rebuttal.
2. The Court admitted evidence of an alleged confession taken by a Justice of the Peace under color of office, after the defendant had been committed to jail for murder.
3. The verdict was against the weight of evidence.

I.

The Court admitted illegal evidence in Rebuttal.

See 1st, 2nd, 3rd, 4th Assignments.

After the State had presented its case in chief and rested, and the defence presented its case and rested, the Court permitted the Prosecutor of the Pleas, on behalf of the State, to give evidence in rebuttal of an alleged explanation the defendant had made of the killing, different from that which the defendant had testified to, in his defence, without first interrogating the defendant upon this point, and obtaining from him, a specific or even a general denial of any kind, in regard to the testimony of one of the State's witnesses in rebuttal, viz:

George B. Senior. (See Ackerman's testimony in point, p. 57, lines 25 to 40, and compare with Senior's in rebuttal, pp. 74, lines 25 to 40; 75, lines 1 to 30.); and without obtaining a specific or even general denial in regard to the testimony of another of the State's witnesses in rebuttal, viz: James Dougherty, (p. 77) and allowed him, against objection to testify to the alleged explanation the defendant had given of the killing to the said George B. Senior; and further allowed one John B. Goodridge to testify against objection to the purport of the alleged explanation the defendant had given to said George B. Senior.

In admitting this testimony against objection, the Court clearly erred.

See Greenleaf on Evidence, sec. 462, in which it was laid down, that "The credit of a witness may be impeached by proof that he has made statements out of Court, contrary to what he has testified to at the trial, but it is only in such matters as are relevant to the issue, that the witness can be contradicted, and before this can be done, it is generally held necessary in verbal statements, first to ask him as to the time, place and person involved in the supposed contradiction. It is not enough to ask him the general question whether he has ever said so and so, nor whether he has always told the same story, because it may frequently happen that upon the general question he may not remember whether he has said so and so, whereas when his attention is challenged to particular circumstances and occasions, he may recollect and explain what he has formerly said."

Ankersmit vs. Tuch, 114 N. Y., 51.
 Conrad vs. Griffnery, 16 How. (U. S.) 38.
 Carlise vs. Hicks, 15 Ga., 160.
 Bock vs. Weigant, 5 Ill. App., 643.
 State vs. McLaughlin, 44 Iowa, 82.
 Kent vs. State, 42 Oh. St. 429.
 Green vs. Higgins, 20 Kan. 420.
 Smith vs. People, 2 Mich.,
 State vs. Davis, 20 Mo., 391.
 Hart vs. Hud. River Bridge Co., 84 N.
 Y., 56.
 Morris vs. Atl. Ave. R. R., 116 N. Y., 556.
 State vs. Wright, 75, N. C., 439.
 Nelson vs. State, 2 Swan. (Tenn.) 668.
 Unis vs. Charleton, 12 Grat. (Va.) 484.
 State vs. Flynn, 51 Vt., 577.
 Defrese vs. Wiese, 46 Wis. 290.
 2. Barb. (N. Y. S.) 210.
 Rapalje's law of witnesses, sec. 203, 210.

A witness may be impeached, but he must first be asked whether or not he made such statements, and if so, allowed to explain them.

Comm. vs. Donahoe, 133 Mass., 407.

A foundation for the impeachment must always be laid by first asking the witnesses whether he made the statements.

Matthis vs. State, 33 Ga., 24.
 State vs. Collins, 33 Ia., 36.
 Atwood vs. State, 63 Ala., 61.
 State vs. Angelo, 32 La., 407.

It is also necessary to ask him the time, place and person to whom the statements were made.

Spaunhorst vs. Link, 46 Mo., 196.

State vs. Kingsley, 43 Ia., 82.

State vs. Glynn, 51 Vt., 577.

A statement made by another in the presence of a witness and assented to and adopted by him, may be proved for the purpose of impeaching him, if it contradicts his testimony in a material point, and he denies that it was made.

State vs. McGaffin, 36 Kan., 315.

Englewood vs. State, (Tex. Crim. App.)
31 S. W. R. 294.

In Crowley vs. Page, 7, C. & P. 789; 32 E. C. L., 737, Parke B. said: "Evidence of statements by witnesses to the matter at issue and inconsistent with the testimony given by them at the trial, is always admissible, in order to impeach the value of that testimony, but it is only such statements as are relevant that are admissible, and in order to lay a foundation for the admission of such contradictory statements, and to enable the witness to explain them, and as I conceive, for that purpose only, he may be asked whether he ever said what is suggested to him, with the name of the person to whom it was said, in whose presence he is supposed to have said it, and some circumstances sufficient to designate the particular occasion.

REMARKS.

The object of the rebuttal evidence in this case was to attack the credibility of the defendant, by showing that he had made statements concerning the killing, different from what he had testified to on the trial. To have properly done this, the Prosecutor should have first questioned the defendant, and obtained from him, a denial, as to the time, place and persons involved, and what was said by him on the occasion. A perusal of the defendant's testimony in point, and that of the State's witnesses, Senior, Dougherty and Goodridge, clearly shows that the defendant was not first given this opportunity of denying or making any explanation of the statements alleged to have been made by him on the occasion in question, as will be shown by the testimony of the defendant, and the State's witnesses in point, and here quoted:

Testimony of Daniel Ackerman, (in point) on cross-examination by Prosecutor: (case p. 57, 25 to 40.)

Q. Were you examined by Justice Senior?

A. Yes, sir.

Q. The next day at the jail.

A. Yes, sir.

Q. On the 12th?

A. Yes, sir, I think I was.

Q. Well, you don't remember?

A. Yes, sir, I was.

Q. You remember that?

A. Yes, sir, somebody was there, but I couldn't tell you who it was.

* * * * *

Q. Did you say in the presence of a man named Dougherty that you had killed your wife? (case p. 58, lines 4 to 7.)

A. Not that I remember. *

This was the only foundation laid by the State, in order to allow Senior, Dougherty and Goodridge to testify in rebuttal to the following:

George B. Senior, sworn on behalf of the State, upon direct examination, upon intimation of the nature of the testimony, defendant's counsel objected to its admission and being over-ruled, took an exception.

Re-direct by Mr. Gourley. (case p. 74, lines 30 to 40; 75, lines 1 to 30.)

Q. What did you ask him with reference to the homicide—with reference to the killnig of his wife?

A. I asked him if he struck his wife with a club, and he said he had, and I asked him how often, and he said once that he could remember—he knocked her down; I asked him if he cut her with a knife, and he said he had, and I asked him what kind of a knife, and he described it.

Q. Tell us what he said about it?

A. An ordinary pocket-knife—a white handled, one of the bones off on one side—a knife about that size; I never saw the knife before.

Q. Until now?

A. Until now.

Q. Did he say anything about where he used the knife upon her?

A. In the neck.

Q. That statement was written down at the time?

A. Yes, sir.

Q. Refresh your memory from that?

A. Well I can remember without looking at it.

Q. What had he to say about where he struck his wife, and with what he did it?

A. (Witness reading) He struck her on the head with a stick; she then grabbed me and I grabbed her.

Objected to; over-ruled, and exception taken.

(Witness continuing) She asked me to let her up and I did so, she then twiggged me again and bit me on my left hand (witness reading) I then threw her down and cut her throat with the knife I had in my pocket.

* * * * *

James Dougherty, sworn on behalf of the State, upon direct examination testified that he was one of the keepers at the (p. 77) county jail, and was present when Senior examined the defendant in point, his testimony was as follows:

Q. Tell us what you heard the Justice say to the defendant about the knife, cutting his wife, and anything, and what the defendant said in response to that?

Objected to; over-ruled and exception taken.

A. The statement—that is all I know,—the statement.

Q. What did you hear him say yourself?

A. I heard him say he used the knife.

Q. How did he use it?

A. He didn't say.

Q. Did he say where he used it?

A. No, he said he used the knife upon his wife—that is all I know.

John B. Goodridge, sworn on behalf of the State, in rebuttal, on direct examination by the Prosecutor, testified as follows: (case p. 78, lines 1 to 23).

Q. In July last were you coroner in Passaic?

A. Yes, sir.

Q. Were you present in the jail at the time this defendant was examined by Justice Senior?

A. Yes, sir.

Q. State what conversation took place about this wife, and where the defendant struck his wife?

Objected to, over-ruled, and exception taken.

A. I understood the defendant to state that he stabbed his wife in the neck.

Q. With what?

A. With a bone knife; it was a white handle, one side off.

Q. He described the knife?

A. Yes, sir.

By a perusal of the above testimony, it will be seen that the Court in admitting such testimony, committed grave error.

In this he is not only uncontradicted by the State, but is corroborated by one Jessie Paulison, the station agent at Butler, (p. 58) who testified that he had sold the passenger tickets to Utter and Mrs. Ackerman, on the night in question. The defendant after searching for her, found her the following May in Fishkill, N. Y. (p. 39) he again condoned her offence and she agreed to live with him. The defendant then gave her a dollar, all the money he had, and then went to look for living quarters in Fishkill. When he returned she had fled to Butler, N. J. The defendant completely discouraged, walked back to Butler, a distance of about seventy miles, being unable to go by railroad, for lack of funds. (p. 40) When he arrived there, he was informed that she was again in company with Utter. This was in June. Defendant then went to Mountview, a village a few miles from Bloomingdale and Butler. On the fourth of July, he returned to Butler. On Sunday the seventh, he stayed in and around the woods, in order that he might catch Utter and his wife again together. (p. 42) He did so, and the next day,—Monday, went before a Justice of the Peace McDonald, to make a charge of unlawful cohabitation against Utter. The Justice referred him to one William McCue, an attorney at law; both the Justice of the Peace and McCue refused to have anything to do with this defendant, by reason of his inability to pay them, Justice McDonald saying: "We can do nothing without some money." (44) In this he is uncontradicted by the State, and corroborated by McCue, (p. 64). The next day,—Tuesday, the 9th, defendant again saw his wife and Utter together in the woods, and again that night (44). From Monday morning the 8th, till Thursday the 11th, the day of the

murder, the defendant slept in the woods, and had nothing to eat (p. 45). On this fatal day, in consequence of his lack of care, rest and nourishment, and the wrong doing of his wife preying on his mind, he was in such a condition, that (to use his own expression) he staggered around like a man intoxicated, (p. 45) and borrowed a knife of a Wesley Wiggins, to cut a cane in order to support and assist himself in walking around (p. 45) in this he is corroborated by Mr. Wiggins, a witness produced on behalf of the State, who testified that the defendant asked him for a knife to cut himself a cane (31). After borrowing the knife the defendant went into the woods, cut himself a cane, and while there, again saw his wife and Utter, together, near Utter's house. They separated upon seeing this defendant, Utter going through the woods, and Mrs. Ackerman going up the railroad track, which ran along nearby the woods. The defendant then went up the track after his wife, for the purpose of having a talk with her. What followed this fatal meeting is best shown by taking his testimony literally, on this point. (pp. 46, lines 13 to 31) "I said "to her, 'I want to know if you are going to stop these "capers and behave yourself,' she wouldn't give me no "answer until we got up the railroad a little ways, and "then I put my hand on her shoulder that way, and I "said 'Why don't you talk to me? With that she gave "me a shove, she didn't want to talk to me she said, and "then she told me that 'I have been with him, and I will "go with him whenever I please.' Then I remember "hitting her with a stick, but where I hit her I can't tell "you. I remember hitting her with a stick, then she "grabbed me and then she went down, she asked me to "let her up, and I did, and she grabbed me again, then

tally and physically, this examination took place. Under such circumstances the Court should have either rejected the whole testimony of this alleged confession, or on his failure to do so, should have instructed the jury to receive this evidence, with great caution. In failing to do this, the Court committed error.

See Greenleaf's Evidence, sec. 214, in which it is laid down that: "Evidence of verbal confessions of guilt is to be received with great caution, for besides the danger of mistake from the apprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, it should be recollected that the mind of the prisoner himself is oppressed by the calamity of the situation, that he is often influenced by motives of hope or fear to make an untrue confession."

III.

The verdict was against the weight of evidence.

Murder is defined to be where a person of sound mind and discretion unlawfully kills any reasonable creature in being, and in the peace of the commonwealth, with malice prepense or aforethought, either expressed or implied.

I Warton's Crim. Law, sec. 930.

The legislature of this State has by positive enactment designated what shall constitute murder in the several degrees denominating the wilful, deliberate and premeditated killing to be murder of the first degree, and all other murder to be murder of the second degree.

The primary requisite in all cases of criminal offences and especially in that of homicide, is that the mental faculties of the person accused of the commission of the act shall be in that condition where such person can discriminate between right and wrong, or could comprehend the natural and reasonable consequences of his act. Although a person may be of sound mind, if for any reason he temporarily, through excitement or passion, should for ever so short a period, loose control of his faculties, or be deprived of the faculty of reasoning, his mind is then disordered, and if while his mind is in such a condition he commits a crime, the law will not hold him responsible, although it appears that before and after the commission of the crime he was perfectly healthy in mind.

This was essentially the defence in this case. The defendant had always been a hardworking, kind and loving husband to his wife (see his testimony case p. 36 to 47) this fact was uncontradicted. His wife on the contrary was a prostitute living in a state of adultery, at every opportunity, with one Edward Utter (c. pp. 37, 39, 41) in this he was uncontradicted by the State. On Christmas night, 1894, the defendant and his wife retired together. When he awoke the next morning, about 4 o'clock, he discovered she had left the house (case p. 39). Upon inquiry he found that she had run off with this man Utter, having left that morning about 1 o'clock (p. 39) and had taken the train for Jersey City.

II.

The Court admitted evidence of an alleged confession or explanation of the killing taken by a Justice of the Peace, under color of his office, and after the defendant had been committed to Jail for murder.

This was error.

See 1st Assignment.

See *Péople vs. Sharp*, 107 N. Y., 427, 445.

In the case of *People vs. Sharp*, 107 N. Y. (above cited) it was held that answers to interrogations propounded by a magistrate, such magistrate having no authority to examine the prisoner, is not admissible in evidence against him.

REMARKS.

Confessions are divided in Judicial and extra-judicial.

Judicial confessions are those made before a magistrate.

GR. EV., sec. 216.

Judicial examinations are the preliminary examinations taken before the prisoner is committed, and their

object is to inquire into the facts, in order to adjudge whether or not such facts are sufficient to hold the prisoner. In this case the defendant was examined by the Justice of the Peace in the county jail, after he had been committed to it for murder, and there was therefore no reason for the examination in this case taking place, other than to extort from the defendant, an alleged confession, to be used against him in the trial of the indictment, and for no other purpose.

The Court properly refused to allow the alleged written confession to be put in evidence, as such, but in allowing the witness to testify to the purport of such a confession, and refresh his memory, by reading whole passages from the written examination (case p. 75, lines 18 to 30), when taken under the circumstances in which it was, was in the opinion of counsel, clearly error, and was as fatal to the defendant as if the written examination had been technically admitted, as it certainly was in fact.

The Court also erred in admitting testimony of the purport of the alleged confession, after hearing the circumstances under which it was obtained.

The killing occurred on the morning of the 11th of July, and almost immediately after, the defendant stabbed himself in the neck and cut his own throat, in an endeavor to destroy his own life. (case p. 8., lines 13 to 20.) In the afternoon of the same day, after laying unconscious for several hours, at the scene of the tragedy, in the open fields, with a hot summer sun beating down on him for seven or eight hours, he was removed to one of the hospitals of the city of Paterson, and the following day,—the 12th, was removed to the county jail, and while there in a wounded and weakened condition, men-

“she went to tear at my face the moment I went to let her up; then I kind of gave her a little jerk with my hand, and then she went down again, and after that she grabbed me again there in the hand with her teeth and and took a piece out, and after that I don’t remember any more, what was done.”

The whole of his story on this point is consistant and reasonable and in no part substantially contradicted by the State’s witnesses and in many parts corroborated by either witnesses for the State or defence, all of whom had no interest whatever in the case.

Upon this point the Court charged (case p. 81, lines 15 to bottom 82, lines 1 to 9.) “According to his evidence it appears that before the eleventh day of July, 1895, he believed that his wife had been guilty of adultery with a man named Utter. That on the morning of that day, shortly before the homicide, he saw both his wife and Utter exchanging salutations, as I remember it. He said that he saw his wife waive her hand to Utter, holding out the impression that he believed that they were possibly about to continue their adulterous intercourse; that he then went to his wife, as she walked along the railroad track, and remonstrated with her about her conduct with Utter. That she at first refused to speak to him, and he then put his hand upon her shoulder and said: “Why don’t you talk to me?” and she gave me a shove and said: “I don’t want to talk to you, I have told you before that I have been with him; I mean to go with him again whenever I please.” That thereupon he struck her with a stick, and a struggle ensued between them, in the course of which she attempted to claw his face—using his expression—and she bit him in the hand; and she went

"down upon the ground twice, and the circumstances
 "after that, he says he has forgotten, but we know from
 "other testimony, that at the close of the scene a mortal
 "stab was given.

"Now, if you believe that to be the substantial truth,
"then I say to you, that the statements will warrant
"you in finding the defendant guilty of manslaughter
"only."

Thus by the charge of the Court, the above facts being found, to be substantially true the defendant would only be guilty of manslaughter. The facts as above presented, being substantially uncontradicted, the inference to be legally drawn, was that his story was true, and the verdict was therefore unwarranted.

This question of fact, is a proper one for review by this Court. "Where the verdict appears to the Courts of Appeal to be manifestly against the weight of evidence, they may reverse the verdict and grant a new trial."

Am. & Eng. Ency. Law, vol. 9, 755.

Holmes vs. State 20 Tex. App. 110.

Lewis vs. Com. 81 Vt. 416.

Pepple vs. Lewis 36 Cal. 531.

Mitchell vs. State, 8 Yerg. (Tenn.) 514.

Giles vs. State 23, Tex. App. 281.

Varden vs. Comm. 12 Grat. (Va.) 717.

Falk vs. People, 42 Ill., 331.

Hudson vs. State, 107 Ind. 372.

Bright vs. State, 10 Tex. App. 68.

In Holmes vs. State, 20 Tex. App., 110 (above cited), it was held that a verdict of murder in the second de-

gree should be set aside when the defence of insanity was almost conclusively established, but disregarded by the jury.

CONCLUSION.

Counsel therefore submits to this Honorable Court, that the errors in this case present a ground for reversal, and the awarding of a new trial to the plaintiff in error.

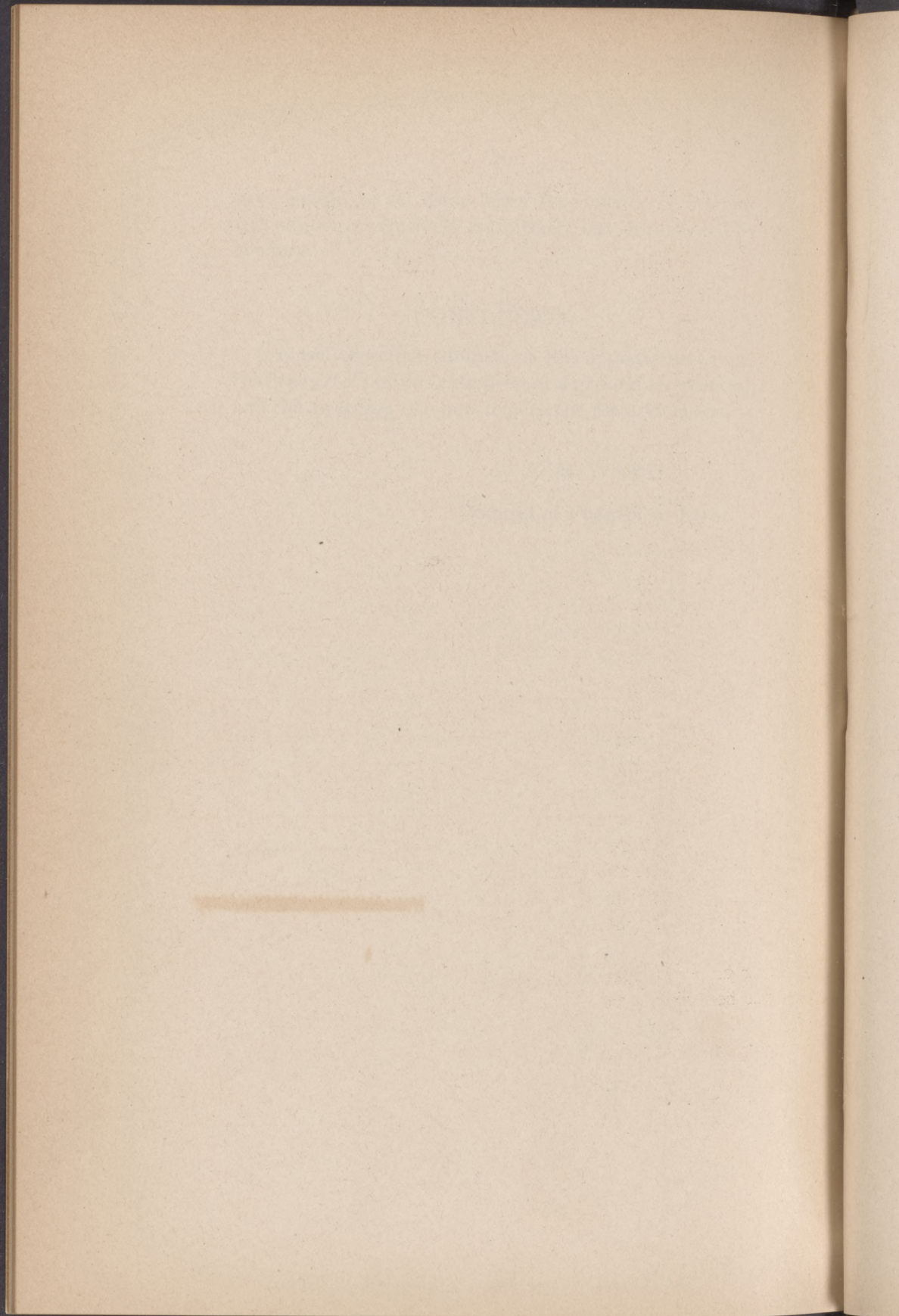
Z. M. WARD,

Counsel of Plaintiff in Error.

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New Jersey Court of Errors and Appeals

DANIEL ACKERMAN,

Plaintiff in Error,

vs.

THE STATE OF NEW JERSEY,

Defendant in Error.

*Sur Indictment
for Murder,
Etc.*

CASE.

Z. M. WARD ~~XXXXXXXXXXXXXXXXXXXX~~

Attorney for Plaintiff in Error.

EUGENE EMLEY,

Attorney for Defendant in Error.

How to get the most out of your book

by J. H. P. [illegible]

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SCHEDULE.

STATE OF NEW JERSEY, PASSAIC COUNTY, to wit :

Be it remembered, that at a Court of Oyer and Terminer and General Jail Delivery, held at Paterson in and for the said County of Passaic, on the fourth day of November, in the year of our Lord one thousand eight hundred and ninety-five, before the Honorable Job H. Lippincott, Justice of the Supreme Court of Judicature, of the State of New Jersey, and John Hopper, James Inglis, Jr., and Alfred A. Van Hovenberg, Esquires, their fellows, Judges of the Inferior Court of Common Pleas, in and for the said County of Passaic, according to the form of the statute in that case made and provided, by the oath of

William K. Newton,
Richard B. Tindall,
Uz V. Munson,
William S. Perry,
James Parker,
Leonard W. Prall,
Isaac A. Hall,
Patrick H. Shields,
William H. Moses,
John F. Lee,
Thomas Beveridge,

James Mitchell,
Charles Haeberle,
Charles E. Burke,
Louis F. Braun,
Charles E. Denholm,
Edward N. Kievitt,
William J. Barbour,
H. Julius Smith,
David F. Duncan,
John Jacobus,
John W. Barrett,

30

Samuel Lockwood,

good and lawful men of the said County of Passaic, duly summoned and then and there sworn and charged to inquire in behalf of the State of New Jersey in and for the said County of Passaic, it is presented in manner and form following, to wit :

PASSAIC OYER AND TERMINER AND GENERAL JAIL
DELIVERY.

September term A.D. Eighteen Hundred and Ninety-Five, Passaic County, to wit : The Jurors of the State of New Jersey, in and for the body of the County of Passaic, upon their oath, present that Daniel Ackerman, late of the township of Pompton, in the County of Passaic aforesaid, on the eleventh day of July, in the year of our Lord one thousand eight hundred and
10 ninety-five with force and arms, at the township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Mary Elizabeth Ackerman, in the peace of God and of this State, then and there being feloniously, wilfully, and of his malice aforethought, did make an assault, and that he, the said Daniel Ackerman, with a certain knife which he then and there in his right hand had and held her, the said Mary Elizabeth Ackerman, in and upon the neck of her, the said Mary Elizabeth
20 Ackerman, then and there feloniously, wilfully, and of his malice aforethought, did strike, cut, stab, and penetrate then and there, giving to her, the said Mary Elizabeth Ackerman, with the knife aforesaid, in and upon the neck of her, the said Mary Elizabeth Ackerman, one mortal wound, of which said mortal wound she, the said Mary Elizabeth Ackerman then and there instantly died ; and so the Jurors aforesaid, upon their oath aforesaid, do say that the said Daniel Ackerman, her, the said Mary Elizabeth Ackerman, in a manner and
30 form and by the means aforesaid feloniously, wilfully, and of his malice aforethought did kill and murder contrary to the form of the statute of such case made and provided and against the peace of this State, the government and dignity of the same.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said Daniel Ackerman, on the eleventh day of July, in the year of our Lord one thousand eight hundred and ninety-five, with force and

arms, at the township of Pompton aforesaid, in the County of Passaic aforesaid, and within the jurisdiction of this Court, the said Mary Elizabeth Ackerman, wilfully, feloniously, and of his malice aforethought did kill and murder contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

WILLIAM B. GOURLEY,
Prosecutor of the Pleas.

Witness :

SAMUEL B. HENDERSON.

10

And afterwards, to wit, on Monday the fourth day of November in the year of our Lord one thousand eight hundred and ninety-five at a Session of the Court of Oyer and Terminer aforesaid, being as yet of the term of September aforesaid, before the Honorable Job Lippincott, Esquire, Associate Justice aforesaid, and John Hopper, James Inglis, Jr., Alfred A. Van 20 Hovenberg, three of the Judges of the Inferior Court of the Common Pleas aforesaid, at Paterson aforesaid, in the county of Passaic aforesaid, here cometh the said Daniel Ackerman under the custody of James Johnson, Esquire, Sheriff of the county of Passaic aforesaid (in whose custody in the jail of the county aforesaid he had been before committed for the cause aforesaid), being brought to the bar here in his proper person by the sheriff aforesaid to whom he is also here committed and having heard the indictment read and forthwith 30 being commanded of and concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he saith he is not guilty thereof and thereof for good and evil he puts himself upon the country. And William B. Gourley, Esquire, Prosecutor of the Pleas for said county of Passaic who prosecutes for the State of New Jersey in this behalf doth the like.

Therefore let a jury come here before the Associate Justice and judges aforesaid, at Paterson in the county of Passaic aforesaid, at the same session of the Court of Oyer and Terminer aforesaid, on Monday the sixteenth day of December next ensuing, being as yet of the term of September in the year of our Lord eighteen hundred and ninety-five of twelve good and lawful men, each of whom shall be a citizen of this State and resident within the county of Passaic aforesaid, above the
10 age of twenty-one years, and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Daniel Ackerman to recognize upon their oaths whether the said Daniel Ackerman be guilty of the murder in the indictment aforesaid specified or not guilty, because, as well as the said William B. Gourley, Esquire, Prosecutor of the Pleas for the said county of Passaic aforesaid, who prosecutes for the State of New Jersey aforesaid, in this behalf, as the said Daniel Ackerman have put
20 themselves upon the said jury. And the same day is given to the parties aforesaid at the same place. At which day, to wit: on Monday the sixteenth day of December in the year of our Lord one thousand eight hundred and ninety-five (being as yet of the term of September in the year of our Lord one thousand eight hundred and ninety-five); at this same session of the Court of Oyer and Terminer aforesaid, held at Paterson in the county of Passaic aforesaid, come as well the said William B. Gourley, Esquire, Prosecutor of
30 the Pleas as aforesaid, who prosecutes aforesaid as the said Daniel Ackerman in his proper person. And the jurors of the jury, whereof mention is within made, are respited between them from day to day and term to term until Thursday the thirteenth day of February in the year of our Lord one thousand eight hundred and ninety-six. At which last mentioned day, before the Court of Oyer and Terminer aforesaid, held at Paterson in the county of Passaic aforesaid, being of

the term of January of said year, before the Honorable Jonathan Dixon, Associate Justice aforesaid, and James Inglis, Jr., Judge of the Inferior Court of Common Pleas in and for the county of Passaic aforesaid, have come as well as the said William B. Gourley, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, as the said Daniel Ackerman under the custody of the sheriff as aforesaid, being brought to the bar here in his proper person by the said sheriff, and the jurors of the said jury by the sheriff of the county 10 aforesaid, for this purpose empanelled and returned, to wit:

James Bradley, John J. Post, Halmagh Post, Frank Van Ness, Daniel Costello, John V. B. Zabriskie, Adolph Schnoor, Benjamin Carless, Bernard Westenhoff, Benjamin Hilton, Adrian R. Van Houten, Samuel Tasney being called, come; who being chosen, tried and sworn to speak the truth of and concerning the premises upon their oath, say, that the said Daniel Ackerman is guilty of the felony and murder aforesaid, 20 on him above charged in the manner and form aforesaid, as in and by the said indictment is above supposed against him.

And that they designate and find that the degree of the said murder and felony is murder of the first degree and that he is guilty thereof.

And afterwards, to wit, on Saturday the fourteenth day of March in the year of our Lord one thousand eight hundred and ninety-six, being as yet of the term of January aforesaid, it was demanded of him, the said 30 Daniel Ackerman, if he hath or knoweth anything to say wherefor the Court here ought not upon the premises and verdict aforesaid, proceed to judgment and execution against him, who nothing further saith, unless as he hath before said.

Whereupon all and singular the premises being seen and by the Court here fully understood, it is considered by the Court and the sentence of the law is, that the

said Daniel Ackerman be taken hence to the jail of the county aforesaid, and that he be there kept in close and safe custody until Friday, the twenty-fourth day of April next; and that upon that day between the hours of ten o'clock in the forenoon and two o'clock in the afternoon he be taken to such place of execution as shall be provided by the sheriff of the county of Passaic according to law and that the said Daniel Ackerman be then and there hanged by the neck until he is dead.

JONATHAN DIXON, }
JAMES INGLIS, Jr., } Judges.

WRIT OF ERROR.

NEW JERSEY, ss.

[SEAL.] The State of New Jersey to the Court of
Oyer and Terminer and General Jail
Delivery, in and for the County of Pas-
saic, of the term of January, in the year
of our Lord, one thousand eight hun-
dred and ninety-six.

Because, in the record and process and also in the giving of judgment upon a certain indictment against ¹⁰
Daniel Ackerman, late of the County of Passaic, for murder, pro ut the said indictment and the several counts therein whereof before you, he hath been indicted and is thereof convicted by a certain jury of the County of Passaic, taken between the State of New Jersey and the said Daniel Ackerman, as is said, manifest error has intervened to the great damage of the said Daniel Ackerman as from his complaint we have received information, we being willing in his behalf to correct the error in due manner if any there shall be and that speedy justice be done to him, the said Daniel Ack- ²⁰
erman, command you that if judgment be thereon given then that you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same to our Court of Errors and Appeals, to be held at Trenton on the twentieth day of November in the year of our Lord, one thousand eight hundred and ninety-six, and this writ, that the said record and proceedings aforesaid being inspected, we may further cause to be done thereupon for the correcting that error, what of right and custom of the State of New Jersey ³⁰
ought to be done.

Witness, Alexander T. McGill, our Chancellor and President Judge of our Court of Errors and Appeals, this fifth day of November, A. D., one thousand eight hundred and ninety-six.

(Signed) HENRY C. KELSEY,

Clerk.

Z. M. WARD,

Attorney.

The Court of Oyer and Terminer and General Jail Delivery of the County of Passaic, does herewith in the Schedule annexed, send to the Court of Errors and Appeals, the record and proceedings whereof mention is made in the foregoing writ of error together with all things touching and concerning the same as is within commanded.

Witness, the seal of said Court, of Oyer and Terminer, and the hand of the Clerk thereof, this tenth day of November, A. D., eighteen hundred and ninety-six.

A. D. WINFIELD,
Clerk.

Passaic Oyer and Terminer.

THE STATE

vs.

DANIEL ACKERMAN

Indictment. 10
Murder, Etc.

Before Hon. J. DIXON, J. S. C., and a
Jury.

PATERSON, N. J. *February* 13, 1896. 20

Appearances:

For the State Wm. B. Gourley, Pros.

For the defendant, Z. M. Ward and Wm. M.
Rysdyk.

EARL J. HARDER, a witness on behalf of the State,
being duly sworn testifies as follows:

By Mr. Gourley:

30

Q. Are you a surveyor and civil engineer?

A. Yes, sir.

Q. With Mr. Menger?

A. Yes, sir.

Q. Have you made a map of the premises where it
is said this thing occurred?

A. Yes, sir.

Q. Are these the maps made by you from measurements made upon the spot ?

A. Yes, sir.

Q. What is the lower map ?

A. It shows—that is the path running from the little cut up to the house.

Q. Well, generally, it is a map of the premises where this trouble occurred and on a smaller scale than the other one ?

10 A. Yes, sir.

Q. What is the scale of the other map ?

A. Fifty feet to the inch.

Q. And the upper map ?

A. Ten.

Q. Can you point out on this map where the foot-path leads from the railway up the bank to the turn stile or swing-gate ?

A. This is the railroad up here—that path runs up the hill in that direction—up to that road.

20 Q. What is that road there ?

A. From the Excelsior mills.

Q. Where is the swing-gate ?

A. At this point.

Q. And it is so on the other map ?

A. Yes, sir.

Q. What are those black marks there—the upper mark on each side of the letter Y ?

A. That is to represent a cut there.

Q. And that other is a culvert on the road ?

30 A. That is a bridge.

Q. What is the distance from where the foot-path shows the railroad to the cut ?

A. Three hundred feet.

Q. And what distance is there from the railway to the swing-gate ?

A. Eighty-seven feet and a half.

Q. What is the grade there on that eighty-seven feet ?

A. Fourteen feet higher than the railroad.

Q. Fourteen feet and eighty-seven feet ?

A. Yes, sir.

Q. Go on and describe the plan of the map ?

A. This map just shows the general situation of the affair: here is the river running down here and this the Excelsior mill, and the railroad here, and this map is the same thing, except upon a larger scale, and that is a portion of this.

Q. What township is it in ?

10

A. West Millford or Pompton—the line is very near.

Q. Where is the line ?

A. Right in here somewhere ; there is nothing to indicate it there.

Q. Back of the cut ?

A. Yes, sir.

Cross-examination by Mr. Ward :

Q. Just put your stick on the swing-gate. [Witness 20 does as directed.]

Q. Now, in going to the swing-gate that path leads you down the railroad ?

A. Yes, sir.

Q. In going toward you, which way would you go ?

A. Towards Smith's mills.

Q. West ?

A. No ; southwesterly.

Q. Now, the bridge across the river ; is there a bridge across the river there ?

30

A. A way down here, yes, sir.

Q. That is down below the paper mills ; isn't there another bridge ?

A. No, sir, until you go near the station.

Q. Now the swing gate there ; it is quite steep the decline there, 14 feet above the railroad,

Q. How far is it above the railroad ?

A. 87 feet.

Q. And what does this represent up here?

A. That is a house, and so are those.

Q. What is the first house that you come to after you go through that swing gate?

A. Following up the path you go to that house.

Q. That is on the road leading to Echo Lake?

A. I am not sure about that.

Q. Are there any woods there?

10 A. There are here.

Q. How far are the woods from where the path leaves the railroad?

A. About 350 feet.

Re-direct examination by Mr. Gourley :

Q. Those marks indicating the houses, do you know who the owners are?

A. That is the Tintell house, this is Mr. Edwards', and these two belong to Marion.

20

MOSES EDWARDS, being duly sworn, testifies as follows :

By Mr. Gourley :

Q. Where do you live?

A. I live a couple miles above Butler, on the road that goes to the lake.

Q. And how long have you lived there?

30 A. A little over a year. I moved there a year ago last fall; I don't know the month.

Q. Do you know the day?

A. Yes, sir.

Q. Did you see Ackerman the morning last July?

A. Yes, sir.

Q. Tell us where you saw him on that morning in July and what you saw him do?

A. I was going down the track when I first saw him with a load of wood and I met him and her.

Q. Who was her—who do you mean by she?

A. This woman that he killed. I don't remember her name—they walked on up the track when I met them and he said "good morning" to and me and passed on.

Q. And after that?

A. I went up to where this swing gate is and I threw my wood over the fence and I turned around 10 and went back again for another load; while I was up the track I heard her halloo.

Q. What did you hear her halloo?

A. She halloosed—I can't tell anything else except "oh," in that way—that was the first I seen of them.

Q. What did you see then?

A. He stood right by her and struck her with his club.

Q. Who stood?

A. Ackerman.

20

Q. Where was he at the time he was striking her with the club?

A. Right up the railroad a little distance.

Q. Do you know where the culvert is?

A. Right above the bridge.

Q. Was he up as far as the steep bank?

A. There is a cut that connects it there—it was nearest to the cut—it was pretty near up, quite close up to the cut.

Q. And where was he standing at the time?

30

A. I think on the edge of the track.

Q. Which edge of the track?

A. On the left-hand side of the track going up.

Q. And where was she?

A. She stood right by him—he stood right up to her.

Q. Was she standing at the time?

A. She was when he first struck her.

Q. What was he striking her with ?

A. A club.

Q. What kind of a club ?

A. Well, it was dogwood, I think a dogwood club.

Q. How long was the club ?

A. It was, I suppose, that length, about [illustrating about 3 feet.]

Q. Look at that and tell me whether it was a stick
10 like that or whether you know enough about it to
know that was the stick.

A. Yes, sir ; that is the stick, only it has shrunk down
a little smaller than it was.

Q. How do you know that it is the stick ?

A. Because it looks like the stick—I should take it
to be the stick.

Q. Is that dogwood ?

A. I don't know.

Q. What did he do after that ?

20 A. He kept right on striking her with the club until
she went down on the ground.

Q. Were they walking as he was striking her ?

A. No, sir ; standing right by her and he kept on
striking until the club went down on the track, then
he jumped on her.

Q. How many times did he strike her with the
club ?

A. I didn't count them ; I think as many as ten or
a dozen.

30 Q. How was the blow given, lightly or hard ?

A. Well, he just took the club and struck right
down.

Q. Can you say how far back this stick went when
he was striking ?

A. Well, I didn't take particular notice about that.

Q. You say that he got down on top of her ?

A. He had his back towards me and he got down—

he acted to me as if he was straddle of her and then he was doing something—to me he seemed very busy and then he got off of her and then stepped up upon the track, and I said, “have you killed her,” and he said, “yes,” I have killed her and now I will kill myself.” I missed a little there, for I first hallooed at him and told him to stop, but he paid no attention to it at all.

Q. Go on ?

A. That ends what he was doing—he stepped on the track afterwards and I didn't notice where he went 10 afterwards. The woman got up and went a little down the railroad—down towards this gate.

Q. When she came down there, did she pass you ?

A. Yes, sir ; I passed her.

Q. What was there noticeable about her appearance ?

A. She was bleeding out of her neck a streak as big as a rye straw and her clothes were soaked with blood clear down to her feet.

Q. Did you notice any blood upon the track ?

A. Yes, sir ; lots of blood.

20

Q. On the ties ?

A. Yes, sir.

Q. Where she passed over ?

A. Yes, sir.

Q. And where did she go after that ?

A. She went on up to this swing-gate and the last I seen her she grabbed her hands to it and laid her head down that way, and then I turned around and paid my attention to the boy.

Q. What boy ?

30

A. The boy that was with me.

Q. Who was he ?

A. Nephew Henderson.

Q. Is a family relation of yours ?

A. My neice's son.

Q. Was the boy with you at the time ?

A. Yes, sir ; both together.

Q. After she fell at the swing gate where did you go ?

A. I went right up past her and up to the house and sent the boy down to the Excelsior mill.

Q. When did you go back down there ?

A. I didn't go back until after quite a while.

Q. When you did go back, what did you see ?

A. She laid there dead when I came back.

Q. Where she had fallen ?

10 A. Yes, where I saw her falling.

Q. Did you see Ackerman after that ?

A. Well, I went down a second time and he laid there below, a few steps behind her back.

Q. Any marks upon him ?

A. Yes, sir ; he had stuck a knife in his neck and had bled quite some.

Q. You say when he was on top of her, as you describe it, on the side of the railway track, that he struck her with this knife—did you see the knife ?

20 A. Not at that time, but I seen it after that they had it up there by the swing-gate.

Q. When he was down upon her, what did you see in respect to any striking ?

A. I seen him make all the motion with his hand as if he was very busy—his back was towards me and I couldn't see that, but when he got off of her this work was done.

Q. How far were you from them at that time ?

A. I suppose about 50 or 60 yards.

30 Q. Have you measured it since ?

A. No.

Q. Have you paced it ?

A. Yes, sir ; from the swing-gate, once.

Q. But not from where you were standing at the time that you saw them ?

A. No, sir ; but my opinion is that it is about fifty or sixty paces from where they were, and I kept going on towards them.

Q. When you met them first, did she speak to you?

A. He did ; she didn't.

Q. How far was he from her at that time?

Q. Right by her, able to put his hand upon her ;
he was behind her and she was in front of him.

Cross-examination by Mr. Ward :

Q. When you first saw him, did you say they were near the cut?

A. They were on this road, just below the swing-¹⁰
gate, a little ways up from where they had turned off
the road.

Q. Were they beyond---towards Smith's mills---fur-
ther up?

A. No ; they were going from there up that track.

Q. How far were they from where the path turned
up to go to the swing-gate when you first saw them?

A. About 30 paces.

Q. And they were going up towards Smith's mills?

A. Yes, sir. ²⁰

Q. And you were coming down towards Blooming-
dale?

A. Yes, sir ; and had a load of wood on.

Q. And you threw your wood over where the swing-
gate is?

A. Yes, sir ; and was going back after another load
of wood.

Q. And when you went back for another load of
wood you saw them again?

A. Yes, sir. ³⁰

Q. Whereabouts were they then?

A. They were just above this culvert a little ways.

Q. How far is that culvert from where the path
leads up to the swing-gate ; how far were they from
that path that goes up to the swing-gate?

A. That I couldn't tell you exactly ; I have paced
it from the swing-gate, and I paced it 130 paces.

Q. And where did he strike her ?

A. And it was there that he commenced to strike her.

Q. That is a culvert there that runs under the railroad ?

A. Yes, sir.

Q. No bridge there ?

A. There is a little bridge that goes there.

Q. It isn't a wagon bridge ?

10 A. No.

Q. Where were you, then, when you saw them—when he commenced to strike her ?

A. I was going up the railroad.

Q. Were you near the path that comes out of the railroad ?

A. I was up above the path a little ways ; it comes out above the railroad.

Q. And were they then moving in any direction when the striking commenced ?

20 A. When I first saw him strike her she hallooed.

Q. Was her face turned towards yours ?

A. Yes ; her face was turned down the railroad and his up the road.

Q. They were facing each other ?

Q. No, sir ; not exactly, I shouldn't think ; I can't tell for certain about that.

Q. She was looking towards you ?

A. Her face was down the track, and his face was kind of sideways, the same as if this is the track, and he
30 looked off this way.

Q. And did you see her fall ?

A. Yes, sir.

Q. Did you keep going on towards her ?

A. I kept going on towards him until he got off of her.

Q. And then what occurred ?

A. I asked him then if he had killed her, and he said, yes, and now I will kill myself.

Q. Did she get up after that ?

A. Yes, sir, and walked down the track.

Q. And passed you on the track ?

A. Yes, sir.

Q. What was he doing then when she passed you ?

A. That I don't know ; I didn't see him after that.

Q. Didn't he go up the track ?

A. I don't know ; I didn't see him after he got out 10 on the track, and she started down.

Q. Did you see some blood flowing from her at that time ?

A. Yes, sir, from her neck down here.

Q. Did you say anything to her ?

A. No, sir, I didn't.

Q. Did you offer to stop the blood ?

A. I didn't say anything to her at all.

Q. And she passed you, then ?

A. Yes, sir.

20

Q. And she went up to the swing-gate ?

A. Yes, sir.

Q. Where was you, then, when she was at the swing-gate—how far was you away ?

A. I was up the track a little distance.

Q. Did you look back and see what she was doing ?

A. She clapped her hands on the gate, and then I turned away.

Q. You didn't see Ackerman at all at that time ?

A. No, sir ; and then I went home.

30

Q. Do you live above there ?

A. Yes, sir.

Q. Didn't you have to go through this swing gate to go home ?

A. Yes, sir ; I went on through the gate when I started to go home.

Q. And was she laying there then ?

A. Yes, sir.

Q. Didn't you pick her up ?

A. No.

Q. Went straight home ?

A. Yes, sir.

Q. Then you turned around and came back ?

A. No, I didn't ; went home first.

Q. Haven't you been going away from this swing-gate when you saw this skirmish ?

10 A. I went away from the swing-gate when I first saw them ; that stopped me, and I didn't go no further.

Q. Then you came back and went through the swing-gate ?

A. Yes, sir.

Q. Didn't you see Ackerman, then, when you went through the swing-gate ?

A. No.

Q. When did you next see him ?

A. Lying down below here—two or three paces
20 below here.

Q. Was there anyone else there ?

A. When I seen him the second time ?

Q. Yes.

A. Yes, there was people.

Q. You didn't see him when you saw her lying there first ?

A. No.

Q. Did you observe what was the matter with him ?

A. He had a little cut in his neck.

30 Q. Was he bleeding ?

A. I didn't pay much attention to him.

Q. Did you see anyone pick him up ?

A. No, I didn't ; I wasn't there when they picked him up.

Q. Did you see anyone pick her up ?

A. No.

Q. They were both lying there ?

A. Yes, sir.

Q. And where did you go from there?

A. I left there—I can't tell you really whether I went up to the house or not, but I guess so; I went right back up to the house.

Q. When you met her and Ackerman going up the railroad, how far ahead of Ackerman was she, about?

A. A couple of feet, so that he could put his hand upon her.

Q. Did he put his hand upon her then? 10

A. No.

Q. Did you hear them saying anything to each other?

A. No.

Q. No conversation at all between them?

A. No, sir, all the conversation I heard was "good morning."

Q. Ackerman said that to you?

A. Yes, sir.

Q. She didn't speak to you? 20

A. No, sir; she didn't.

Q. What is your age?

A. I am 75 years old; if I live to see the 15th of March I will be 76.

Q. Did you observe whether Ackerman had a stick or not in his hand?

A. Now, I couldn't say certainly whether he had a stick in his hand when he went up.

Q. Did he walk nearer to you than the woman?

By the Court : As they passed you, who was 30
nearest to you.

Witness : Him or her?

By the Court : Yes.

Witness : Well, I couldn't see any difference
from the distance.

Q. And when did you first see the stick that we have been speaking about ?

A. At the swing-gate.

Q. Hadn't you seen it before ?

A. No, sir.

Q. I thought you said that you saw him striking her with the stick ?

A. Yes, sir.

Q. But you didn't see what kind of a stick it was,
10 then, at that time ?

A. No.

Q. All you know was that they brought the stick to the swing-gate and that is all you know about it ?

A. Yes, sir.

Q. And you think this is the stick that you saw at the swing-gate ?

A. It looks like it.

Q. When did you see the knife first ?

A. I didn't see at all, they had it up there at the
20 swing-gate.

Q. And it was after you had seen them both lying there ?

A. Yes, sir.

Q. Who showed you the knife first ?

A. I couldn't tell you, they had it there and someone had picked it up.

Q. You can't tell ?

A. No, different ones looked at the stick.

Q. And can you tell us who was there at that time ?

30 A. Well, no, not exactly, I can't.

Q. Did you know any of them at all ?

A. I know some of them, but I have forgotten exactly which ones were there—that went out of my mind—I didn't pay attention enough to remember who was there or their names.

SAMUEL HENDERSON, witness on behalf of the State
being duly sworn testifies as follows :

By Mr. Gourley :

Q. How old are you ?

A. Fifteen past.

Q. Where do you live ?

A. Above Butler, about a mile.

Q. Were you with Mr. Edwards on this day in
July ?

10

A. Yes, sir.

Q. The day that Mr. Ackerman was seen on the
railroad track ?

A. Yes, sir.

Q. Where were you going when you saw Ackerman ? Where were you going then ?

A. To the swing-gate, taking our wood towards
home on the railroad track.

Q. Coming from what direction ?

A. Coming from the west—something like that.

20

Q. From what place above ?

A. Smith's mills.

Q. Down to your house ?

A. Yes, sir.

Q. Who was with you ?

A. Mr. Edwards.

Q. What time was it when you saw Ackerman ?

A. I guess somewhere near 8 o'clock—something
like that.

Q. In the morning ?

30

A. Yes, sir.

Q. Now just go on and tell us what you saw then—
Ackerman and anyone with him ?

A. What was done afterwards—I saw Mr. Ackerman and Mrs. Ackerman going on the track.

Q. This woman with him was his wife ?

A. Yes, sir ; and a little bit ahead of him, and I

passed by and said good morning to Mr. Ackerman ; he said good morning to me and then I went on up the bank, threw my wood over the fence and then I looked back and my uncle was coming back and he threw his over and then we seen him striking her with a club and he struck her with a club somewheres near a dozen times and she hallooed, "Oh ! oh ! oh !" something like that, and in coming down the track slowly he was striking her and she hallooing, and next I looked out
 10 and saw him kind of straddle of her on the railroad track a little from the track and his back was towards me and he was doing something and my uncle was hallooing and when he got off of her I said "Have you killed the woman" and he said "Yes, I have killed the woman;" and he said "I will go up to her and kill myself;" and then he went on the track and she got up and went on the track and passed us and went up to the swing-gate, laid her head so on the swing gate on her hands and I went up by that
 20 way and my uncle called towards me and he said "you go down to the Excelsior mill and tell the hands," and I did so and told them and Hen Carrigan and Walt Carrigan, they started up the track and I started up with them and Hen ran as hard as he could and I couldn't keep up with him, so I kept up with Walt Carrigan, and after that they were coming back—he had been up there a few steps from the bank—and Mr. Walter Carrigan went on there and I didn't go on up there and he said to me, "Go for a Doctor;" and I
 30 went to Butler for Dr. Coates.

Q. Did you go near enough to see them ?

A. Yes, sir; I saw them both plainly.

Q. Where were they then ?

A. By the swing-gate and Mr. Ackerman was a little off below here.

Q. How far below ?

A. Somewheres near four or five feet, I think.

Q. Any blood?

A. Yes, sir ; blood along there.

Q. Where?

A. All the way along down the track.

Q. Any blood near where Mrs. Ackerman laid?

A. Yes, sir.

Q. Any blood near where Ackerman laid?

A. Yes, sir.

Q. Did you see any scars on Ackerman?

A. Yes, sir ; a hole in his throat.

10

Q. Then you came back again?

A. Yes, sir ; I went for the doctor.

Q. After they were laying in the same place still?

A. Yes, sir.

Q. What time was it when they were taken away?

A. Somewheres near about 3 o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. Where were you standing when you saw Ackerman strike his wife with the stick and club—where?

20

A. I think I was on the railroad track, going up again.

Q. Well, how far were you from where Ackerman was ; do you remember?

A. Oh, I couldn't say exactly ; not a good ways.

Q. Where was it that he was standing—was it beyond the culvert?

A. He was a little bit above it.

Q. Was he as far as the embankment there?

A. Somewheres right along by that.

30

Cross-examination by Mr. Ward :

Q. Where were you with your uncle when you met him going up the track?

A. My uncle was by my side.

Q. Were you ahead of your uncle?

A. Yes, sir.

Q. And were they close together, then, when you met them?

A. Yes, sir; about two feet apart; she was ahead of him.

Q. And was he saying anything to her?

A. No, sir.

Q. And did you notice whether he had a stick in his hand or not?

A. No, sir; I didn't.

10 Q. Do you know whether he had one in his hand or not?

A. I didn't see any stick until I saw him strike her with a club.

Q. Whereabouts was he then?

A. I think I was going up the track; I forget now.

Q. Was your uncle with you then?

A. Yes, sir.

Q. How near were you to them?

A. A little distance off; I can't say how much.

20 Q. Did Ackerman then go up the track after he got off of her; where did he go?

A. He got up on the track; I didn't take notice whether he went up the track or where he went; I didn't see him after that.

Q. You saw him lying by the gate?

A. Yes, sir.

Q. Did you see him after that?

A. I didn't see him after he got up off of her.

30 Q. Did she pass you after you saw him get off of her.

A. Yes, sir; she did.

Q. And where did you and your uncle go then?

A. Down the track.

Q. Down or up the track?

A. Down.

Q. Toward the Excelsior mill?

A. Yes, sir.

Q. Where was your uncle when you say he asked Ackerman if he had killed a woman?

A. On the track going up that way.

Q. And how near to Ackerman?

A. A little distance off.

Q. Well, Ackerman was off the woman then?

A. Yes, sir.

Q. And was he moving in any direction then?

A. Not that I know of—I seen him get off of her and go on the track. 10

Q. Now did you hear him say to your uncle what you have told us here?

A. Yes, sir; I did.

Q. Were you sworn before the coroner's inquest?

A. Yes, sir.

Q. You didn't state that there?

A. I don't remember.

Q. Do you remember whether you did or not?

A. I don't remember.

Q. When you went down to the Excelsior mills and got someone to come back—were there many people at the gate when you came back? 20

A. After I came back from the mill?

Q. Yes, you saw them both lying by the gate?

A. Yes, sir; there was nobody only me and Mr. Walt Herring, he went up by them and I didn't go near to them but went for a doctor.

Q. Did you go home before you went back?

A. No, sir.

Q. Didn't you say before the coroner that you went home and was there 15 minutes and then went back? 30

A. I don't remember whether I did or not.

Re-direct by Mr. Gourley:

Q. Which direction did Ackerman go after he got up from his wife?

A. He got on the track and I suppose he went up the track—I didn't see him come down.

Q. When she passed you did you see any blood on her clothes?

A. Yes, sir; running down her dress, coming from her neck or somewheres up there.

Q. Where are Walter Carrigan and Henry Herring now, where are they—do you know?

A. No, sir; I don't.

10 Q. All living there now?

A. I don't know anything about them.

THEODORE F. DARLING, a witness on behalf of the State, being duly sworn, testifies as follows:

By Mr. Gourley:

Q. Where do you live?

A. Pompton.

20 Q. Were you at the scene of this killing, July last?

A. Shortly after; yes, sir.

Q. What time was it when you reached there?

A. About 9 o'clock.

Q. In the morning?

A. Yes, sir.

Q. What did you see in reference to Mr. and Mrs. Ackerman?

30 A. Well, I was on that morning on my way to work and just this side opposite the paper mill there was a boy came running along, and said, "There is a man who has killed his wife," On that statement, and it was that boy on the stand who said it, I drove along until I got to Smith's mill, and tied my horse and went up to that cut, and just below that gate I saw the blood and that old man was up there; there was two or three there by that time, and Mr. Ackerman laid close to the railroad and his wife laid further up by the gate, and in the

meantime I went up to him and asked him who did this and he made no answer, and I felt around in his clothes and I couldn't find anything, and someone said—

Objected to.

Objection sustained.

Q. Did you find anything?

A. I didn't find anything, only I took the coat from under his head and covered over her body and then I told—

10

Objected to.

Q. Did you look for anything or find anything or see anything in the way of a knife?

A. Yes, sir; I saw the knife.

Q. Look at that and tell us what you found? Is that it?

A. Yes, sir.

Q. Did you see it there?

A. Yes, sir; I took it out of a man's hand and kept the knife and gave it to Tappin the constable—that is the knife—I opened the knife—the knife was closed.

20

Q. Was she living at that time that you reached there?

A. No, sir; she was dead.

By the Court: Do you remember the date.

Witness: It was the 11th of July.

By the Court: Do you say that you got that knife out of someone's hand—who was he—do you know the man?

30

Witness: No, sir; If I could tell how it happened I could tell how I got the knife; I can't remember the name.

Cross-examination by Mr. Ward:

Q. Was Ackerman bleeding at that time?

A. Yes, sir.

Q. Very much ?

A. He was bleeding, but not very much—I saw there was a hole in his throat.

That is all.

NICHOLAS MARION, a witness on behalf of the State, being duly sworn on his oath, testifies as follows :

10

By Mr. Gourley :

Q. Where do you live ?

A. On the road that leads to Echo Lake.

Q. Did you see this defendant in July when Mrs. Ackerman was killed ?

A. I can't remember the day ; yes, sir.

Q. A day last summer ?

A. Yes, sir.

Q. I suppose you were at the place where she was
20 lying at the swing-gate ?

A. Yes, sir.

Q. What time was it when you reached there ?

A. 9 o'clock, I guess.

Q. Did you go up the railroad ?

A. Yes, sir.

Q. For what purpose ?

A. There was a lot of us there and we went up to see if we could see anything where this was done.

Q. What did you find ?

30 A. Nothing more than that little wood and it had some blood on it.

Q. Did you find that stick ?

A. Yes, sir ; that is the stick.

Q. Where did you find that ?

A. Right up in that little cut there just this side of the culvert.

Q. What do you mean by "on this side of the culvert?"

A. The little bridge that goes across the track.

Q. How near to the cut was it that you got this stick?

A. Right by the cut on the left-hand side as you go up.

Q. On which track?

A. The side of the track against the bank.

Q. What time was it then?

10

A. 9 o'clock in the morning, I suppose.

Q. And was there any blood upon it?

A. Yes, sir; I believe there was.

Q. Didn't you notice when you got it whether there was any or not?

A. I thought so.

Q. Do you see any here upon it?

A. Yes, sir.

Q. At the end of it?

A. Yes, sir; it might have got off.

20

Q. Here like what is on it now?

A. Yes, sir.

Q. More than that?

A. Yes, sir; more than that.

Q. Was Constable Tappin with you at the time?

A. Yes, sir.

Cross examination by Mr. Ward:

Q. Did you see Mr. Ackerman?

30

A. Yes, sir; he laid there by the gate.

Q. At this swing-gate?

A. Yes, sir.

Q. And that was before you went by the track?

A. Yes, sir.

Q. Now, how far was it above the culvert or below it that you found that stick?

A. It was below it.

Q. Down towards the swing-gate ?

A. Yes, sir.

Q. Had you then seen Ackerman ?

A. Yes, sir.

Re-direct by Mr. Gourley :

Q. What do you mean by "down near the swing-
10 gate ?"

A. There is a little swing-gate there that they have
to get across.

Q. Was it there that you found this stick ?

A. No, sir ; it was up the track that I found it.

Re-cross by Mr. Ward :

Q. Near the little culvert ?

A. Yes, sir.

20

GEORGE C. COATES, witness on behalf of the State,
being duly sworn, testifies as follows :

By Mr. Gourley :

Q. You reside at Butler, Dr ?

A. Yes, sir.

Q. Do you remember July last being called upon to
see Mrs. Ackerman ?

30 A. Yes, sir.

Q. Who came for you ?

A. A boy by the name of Henderson.

Q. What did you do ?

A. I went with him.

Q. Immediately ?

A. No, probably kept him five or ten minutes.

Q. What time was it when you reached this place ?

A. About half-past eight or a quarter to nine.

Q. State what you saw, then.

A. I tied my horse at the mill and crossed the bridge, and went up the railroad, and along by the swing-gate I saw Mrs. Ackerman lying on her back—she had partly fallen against the fence—she was covered with blood, and a stab wound on the left side of the neck, near the jugular ; and a little way from where I saw her I saw Daniel Ackerman lying probably 30 feet from there ; he also had a stab wound in his neck, only 10 it was on the right side.

Q. The wound near the neck, could you see what kind of an instrument it was caused by ?

A. A sharp instrument, or point of an instrument.

Q. An open wound, was it ?

A. Yes, sir.

Q. Look at that knife and tells us whether, from the appearances of a knife of that character, it would cause a wound like what was on the throat of Mrs. Ackerman ?

20

A. Yes, sir, it would.

Q. How wide was the wound ?

A. Well, it was probably three-quarters of an inch wide ; I didn't measure it, but it was a short one.

Q. Short in the external appearance ?

A. Yes, sir ; not a wide one, but deep

Q. It was a clean-cut wound ?

A. Yes, sir.

Q. All the indications of a thrust or stab ?

A. Yes, sir.

30

By the Court : Fatal wound ?

Witness : Yes, sir ; I should say so.

Q. Was Mrs. Ackerman dead, then ?

A. Yes, sir.

Q. Can you say what the cause of death was ?

A. I think she bled to death, from the location of the wound and the appearance of her clothes ; she looked almost bloodless.

Q. Blanched ?

A. Yes, sir.

By the Court : Jugular vein cut ?

Witness : Yes, sir ; from looking at it I thought it was cut ; it was over the location of the jugular.

10

Q. Did you see any other marks ?

A. Yes, sir.

Q. Where ?

A. On the left-hand side of the head—she had been struck, I think, so Constable Tappin said, and another wound on the other side.

Cross-examination by Mr. Ward :

20 Q. How wide was the wound on the side of the neck, Doctor.

A. I should think three-quarters of an inch ; it was a narrow wound.

Q. It had the appearance of just a stab of a sharp instrument ?

A. Yes, sir.

Q. Now, if that wound had been seen to at once, do you think that her life could have been saved ?

30

Objected to.

Objection sustained.

Q. How deep was that wound ?

A. Well, now, I didn't examine the depth of it but I would say it was a gaping wound.

Q. You didn't make a close examination of it ?

A. No, I had no authority to ; it was only from

the appearance and from her color; I supposed it was a deep wound.

Q. That is, she bled to death from that wound?

A. Yes.

HENRY V. DAY, a witness on behalf of the State being duly sworn, testifies as follows:

By Mr. Gourley;

10

Q. I believe you are a practicing physician at Butler?

A. Yes, sir.

Q. And on this day, the 11th of July, were you called to the scene of this homicide?

A. I went up there for curiosity and I looked at her.

Q. Where did you find her?

A. By the swing-gate at one side of it.

Q. Just describe her appearance?

20

A. The wound at the side of the neck, and the head was very much bruised at the back part and cut and heart was covered with clotted blood; her clothes covered with blood, she was very much blanched, looked almost bloodless.

Q. See blood on the ground around her?

A. Yes, sir; on the body and around.

Q. What have you to say about this wound?

A. It was there—just at the left side.

Q. What kind of a wound was it?

30

A. It had the appearance of a stab wound—it was not a slash one.

Q. Stabbed by some sharp instrument?

A. Yes, sir.

Q. Would an instrument like that cause it—look at that knife?

A. Yes, sir.

Q. Have you anything to say as to the cause of death?

A. It is my impression that she died from hemorrhage.

Q. Did you examine the depth of the wound?

A. No, I did not.

Q. You didn't examine her very closely?

A. No, only superficially.

10

JOHN SHIPPEY, a witness on behalf of the State being duly sworn testifies as follows:

By Mr. Gourley:

Q. Undertaker?

A. Yes, sir.

Q. Place of business where?

A. Butler.

20 Q. Did you take charge of the body of Mrs. Ackerman in this matter.

A. Yes, sir.

Q. What time was it when you saw her body first?

A. Between 2 or 3 o'clock of July 11.

Q. Where did you find her body.

A. Found it near Smith's mills on the upper side of the railroad by the swing-gate, I did.

Q. This swing-gate?

A. Yes, sir.

30 Q. Now, did you dress the body—wash it?

A. Yes, sir.

Q. Saw the body naked? Yes, sir.

Q. Will you describe her wounds—where, upon the body, and the bruises or blows externally?

A. I found the head somewhat bruised by the appearance that blood had come from it; and the right hand and arm, near the elbow, had ridges of same

description; the appearance of club blows, or something of the kind, and the appearance of the head; and there was a cut in the back of the neck, probably, an inch and a half, and a stab wound in the throat.

Q. What indication was there of a blow on the side of the head?

A. There was a large swelling on the side of the temple there over the ear.

Q. What was there in and about the shoulder?

A. I think there was something across the right shoulder.

Cross-examination declined.

WALTER B. JOHNSON, witness on behalf of the State, being duly sworn, testifies as follows:

By Mr. Gourley.

Q. You are the county physician in this county?

A. Yes, sir.

20

Q. And have been for a year past?

A. Yes, sir.

Q. On the 11th of July, did you visit Smith's mills for the purpose of seeing Mrs. Ackerman?

A. Yes, sir.

Q. What time was it when you got there?

A. I left here by the train that leaves Paterson at 1 o'clock.

Q. Was any autopsy held on the body?

A. No, sir.

30

Q. Why not?

A. I made an examination of the body, which was sufficient, I considered, to make affidavit as to the cause of death and no further examination was ordered by the coroner.

Q. You didn't direct the coroner to hold an inquest?

A. Yes, sir.

Q. But no examination was made of the body?

A. The coroner is to tell me when an autopsy is to be made, but I told the coroner that I was prepared to make affidavit.

Q. And what was the cause of death?

A. Hemorrhage.

Q. Due to what?

A. Due to the severage of the jugular vein. I made a sufficient examination of the body to determine that and that it was caused by a stab wound in the neck; this wound was about between three-quarters of an inch in length, but in the inside the cut was much longer and deeper; probing the wound open you could expose the cavity there—it was an inch and a half deep; the woman was a young woman; the wound was very deep; it went down this way—and if it had gone straight down it would have severed the artery in the neck and she would have been dead before she could have walked up the hill.

20 Q. How far did the knife go in?

A. The knife went in deep enough to cut the artery, but it went toward the side of the neck instead of straight down.

Cross-examination declined.

WESLEY MIGGINS, witness on behalf of the State, being duly sworn, testifies as follows :

30 By Mr. Gourley :

Q. Where do you live?

A. Up above what they call Mariontown.

Q. Have you lived there for more than a year past?

A. Yes, sir.

Q. Do you know the defendant?

A. Yes, sir.

Q. Do you know of the day of the killing of Mrs. Ackerman?

A. Yes, sir.

Q. When before that time had you seen Mr. Ackerman?

A. He came to my house half past four that morning.

Q. On the morning of the 11th?

A. Yes, sir; half-past four on the morning of the 11th—the same morning. 10

Q. And were you up at that time?

A. No, sir; we sleeping in the room on the second floor—we were sleeping on the floor during the hot weather in the summer—we fetched clothes down and slept on the floor of the room and when he came inside the room the dog barked, and I went to the window and I saw it was Ackerman, and I hallooed to him and I said "halloo Dan;" and he said "Halloo, Mike;" and I said "What are you doing here this morning?" I asked him, "Dan, 20 where did you stay last night;" and he said "down the road" and he said "let me have your knife, I want to cut a cane;" then I said it was half-past four and I told him I was going to lay down until breakfast was ready and I sat down—I laid down and then he said "I am going to help myself to a chew of your tobacco" and five minutes after that he said "I have got your knife here and am going to cut a cane and I will go and cut it and come right back;" and he never came back. 30

Q. Is that the knife; look at that on the table?

A. Yes, sir; that is it; it is my boy's knife.

Cross-examination by Mr. Ward:

Q. Had you seen him before that?

A. Yes, three times after his wife had left.

Q. When did you last see him?

A. On Monday night.

By the Court: Monday of what week was this; was this the 11th of July?

Witness: It was on Thursday he came up the road when I was at home, and he said, "You have nice cabbages."

10 Q. Did you see him after this occurrence?

A. Yes, sir; when I was called before the Grand Jury, but not—

Court orders an hour's recess.

Two p.m.; Examination Resumed.

GEORGE CRAMER, witness on behalf of the State, being duly sworn, testifies as follows:

20 By Mr. Gourley:

Q. What is your business?

A. Photographer.

Q. Where had you your place of business last July?

A. In Butler.

Q. Were you, on the 11th of July, at the scene of this homicide?

A. Yes, sir.

Q. What time was it when you reached there?

30 A. 10 o'clock.

Q. What did you do, when you got there; what did you see?

A. I saw two parties lying upon the ground, and I proceeded to photograph them.

Q. What time was it?

A. 10 o'clock, about.

Q. Did you take a photograph of the bodies as they

were lying there at that time, on that morning, and is that a photograph?

A. Yes, sir ; that is the photograph.

Q. Taken by you on that morning?

A. Yes, sir.

[Photograph offered in evidence.]

Cross-examination by Mr. Ward :

Q. Did you know the man that was lying there in that photograph?

10

A. No, sir.

CHILLY M. TAPPIN, witness on behalf of the State, being duly sworn, testifies as follows :

By Mr. Gourley :

Q. Constable of the county?

A. Yes, sir.

Q. And was at the scene of this homicide in July 20 last?

A. Yes, sir.

Q. What time was it when you got there?

A. About 9 o'clock.

Q. What did you do with reference to looking around for anything?

A. When I got there Mr. Durring gave me the knife.

Q. What with reference to this stick?

A. Me and Mr. Utter stayed there; that is the club 30 that laid up the track, and so we went up there and got this stick.

Q. Where did you get it?

A. Right in the cut just above the culvert.

Q. Any blood upon it?

A. Yes, sir.

Q. Hairs upon it?

A. Yes, sir.

Q. Now, was there any blood about where that stick was found ?

A. Yes, sir, there was ; there was some weed sand morass there, and the blood had run down below it, and there was quite a pool of blood there.

Q. Coming down the track towards the scene, was there blood upon the ties ?

A. There was ; yes, sir.

10

Cross-examination by Mr. Ward :

Q. Did you see Ackerman ?

A. That morning ?

Q. Yes, sir.

A. Yes, sir.

Q. Where was he when you found this stick ?

A. He was lying right below his wife near this scene, I should judge near 8 feet near her ; there was blood coming out of his mouth and his ear, and out of his
20 neck.

Q. Was his neck cut ?

A. Yes, sir, down here somewhere.

Q. This photograph, which I show you, is this a photograph of yourself on the extreme right ?

A. Yes, sir.

Q. Were you by when this photograph was taken ?

A. Yes, sir.

Q. And those were lying there as there in this photograph ?

30 A. Yes, sir.

State rests.

Defendant's Testimony.

DANIEL ACKERMAN, being duly sworn, testifies as follows :

By Mr. Ward :

Q. Where were you born ?

A. That is something I can't exactly tell you.

Q. Where have you spent most of your life ?

A. Greenwood Lake, N. J. 10

Q. And what has been your business particularly ?

A. Well, working around wherever I could get work to do.

Q. How old are you now ?

A. If I live to see the 15th of May I will be forty-one.

Q. You have been married ?

A. Yes, sir.

Q. Where were you married ?

A. Married at Ewarts, near Greenwood Lake, and I 20
married a girl by the name of Mary Elizabeth Tyndall,
on the 21st of October.

Q. And how old was she ?

A. She was 18 and past.

Q. And when were you married ?

A. She was 18 and past.

Q. Where did you live after your first marriage ?

A. To Bloomingdale.

Q. And in this city and county ?

A. Yes, sir. 30

Q. About how long did you live out there ?

A. The best part of 2 or 3 years keeping house.

Q. And then where did you go to live ?

A. I went to Boonton and I lived there one summer and she didn't like it and wouldn't stay there and I came back to Bloomingdale and lived there a couple of years.

Q. Then where did you go to live?

A. I forget now.

Q. Did you live away from Bloomingdale after that?

A. Yes, sir.

Q. Where did you go then?

A. I forget now whether I went to Greenwood Lake to live; yes, I went to Greenwood Lake; I went to boarding there.

Q. Your wife go with you?

10 A. Yes, sir.

Q. Where were you living two years ago?

A. Living right in Bloomingdale there.

Q. With your wife?

A. Yes, sir.

Q. Keeping house?

A. Yes.

Q. Did you have some trouble with your wife?

A. No, sir; let me see—two years ago.

Q. I want to know if you did have trouble with your
20 wife; I want to get as near the time as possible?

A. Yes, sir; I have been talking to her about these capers but I never had any quarrel or anything like that.

Q. Did you observe anything wrong about your wife?

A. Yes, sir; I did what a man told me; I had been up to Haverstraw working and she had been in Bloomingdale—that was two years ago—no it was Fishkill—two years ago when I came back.

30

Objected to.

Objection overruled.

Q. Just go on and tell us, now?

A. I was in Fishkill working there all summer and I wanted her to move there and she wouldn't and when I came back in the fall I was going down the railroad and this fellow was with May, and I met Mr. Ezra

Carr, and he was working on the railroad, and he said to me—

Objected to.

Objection overruled.

and Mr. Carr said to me, he said, "Halloo, Dan, you got home," and I said, "Yes," and he said that Ed has been taking care of your wife all right since you have been gone—and never said a word, but he walked away and from that time on I mistrusted her.

10

By the Court : Who do you understand by Ed?

Witness : Edward Utter.

Q. Go on.

A. I forbade her from allowing him there when I was gone, and she said she had and she said that she had forbidden him and he kept on going on so the neighbors were telling me stuff.

Q. Just tell us what they told you?

20

A. I told him I wanted him to stay away from there when I wasn't at home and he didn't say whether he would or not. He said that he hadn't been there and I went there and caught him in the house ; caught him coming from the bed by her where she was ; had not time to sit down before I got into the house ; she was there by the bed.

Q. Go on.

A. Then I didn't say nothing to her, but afterwards—after he went out ; I didn't want to make no trouble in the house and I asked her if she wasn't going to stop these capers and behave and she didn't give me no satisfaction whether she was or was not and I got right down by the bedside on my knees and begged of her when she was in bed to stop these capers.

30

Q. What do you mean by that?

A. This work having neighbors talking about her.

Q. About what?

A. About laying with Utter.

Q. Did you tell her that?

A. Yes, sir, and she didn't say whether she would or not.

Q. Now the next time?

A. I want to tell this as near straight as possible.

Q. Well, tell it; did you see Utter to the house after that?

10 A. I seen him to the house after that when I was working down below the house.

Q. Tell us what you saw.

A. I saw him there coming out of the house; I saw somebody; I couldn't tell who the lady was that went into the house, but as soon as he came out, she went out to Nicholas Mentrose.

Q. What part of the house did he come out of?

A. The front door.

Q. Did you speak to her about that?

20 A. Yes, sir, and she said he had only stopped in there a few minutes.

Q. When did you see him there again?

A. I believe that is the last time that I saw him there.

Q. At that house?

A. Yes.

Q. And did you go to Fishkill?

A. Yes, sir; I went there to work the next summer.

Q. Did anybody go with you?

A. Yes, sir; I went there—I am ahead of my story;
30 a little after Christmas she asked me if I would stay home, around the house, and let her go down to her sister's, and I said, "Yes," I would—and I did; I stayed around all day, and she went down to her sister's and came back at night; and this Utter was there with me around the house that day, and he was there that night a little while and went home; we went to bed, and toward morning I woke up and she was gone. I

got up about 4 o'clock in the morning, lit the light and went up stairs, and she wasn't up there ; and as soon as daylight came I went down to Mrs. Marion's house, below me, and I was telling them there that she was gone. And Mrs. Marion came in and said that Edward Otter had been home that night and done his clothes up at 1 o'clock at night, and she bet they had skipped out. And then I went down to the depot to see whether they went on the train or not ; and I saw the night operator and I was speaking to him about it. 10 He told me that they had been there, and this Utter had, and how he broke a \$5 bill and bought two tickets for Jersey City, and she was with him, and they both got on the train together. Then I went to Fishkill. I thought she had gone to her sister's there, but she wasn't there. I went to my brother's house first, Flemming, and I asked him if he had seen anything of her. He said that he hadn't seen anything of her, and I went to work somewheres around a couple—two or three weeks—and she came there. 20

Q. Were you working there in Fishkill ?

A. Yes, sir ; chopping wood there. She came there and stayed there up to May.

Q. When she came there, did you say anything to her about going away ?

A. Yes, sir.

Q. Tell us all that you said and what she said ?

A. I asked her what I had done to make her go away, and she said I had done nothing to her ; and I asked her, "Why did you go away like that?" She 30 said, "I didn't think that you would care anything about it." I looked for her at home when I came back.

Q. Did she tell you who went with her ?

A. She said that Utter had been with her. I asked her then if she wasn't going to stop them capers and live as she ought to do and stop the folks' mouths,

and she didn't give me any satisfaction whether she would or not ; and then after awhile she told me, " I guess I will stay here this summer ; you get this house next to Pete's "—that is Mr. Flemming's. I tried to get the house there, and the man promised it, but I didn't get it ; and I went down below there to a place called Dutchtown, to see if I could get a house. I had a dollar in my pocket and I gave it to her, and she started away. I had a job to get a house, and when I came
10 back she was gone back to Bloomingdale.

Q. Then what did you do ?

A. Then I got discouraged, and I went from there to—

Q. Where ?

A. To Bloomingdale.

Q. How did you get there ?

A. I walked every step of it—all the way. I walked on there until Saturday night, coming there then.

Q. Did you see her in Bloomingdale then ?

20 A. Yes, sir ; she hadn't gone to bed ; first I spoke to her and she wouldn't speak to me.

Q. Where was she ?

A. In her mother's house ; I asked what was the reason that she didn't let me know that she was going away. She would not answer me, and I didn't say anything more to her. I stayed there all day Monday and Sunday, and on Monday I came down to Montview and got a job there.

Q. What kind of a job ?

30 A. In the brickyard.

Q. You left her at her mother's ?

A. Yes, sir ; and I worked down there a little over a week, and I went up again and spoke to her and she wouldn't speak to me.

Q. Where was she then ?

A. To her mother's. Then I didn't bother any more. I stayed there that night and went back the

next morning again. It was on Saturday night when I went up, and on Sunday afternoon I went back to work. I was gone, I think, two weeks that time. She wasn't there then, and then I went up there.

Q. Where ?

A. To her mother's, she was down to Martin Harmon's and I heard she was laying around the woods with Utter and I went to Martin Harmon and forbade him harboring her ; I said "I was willing to do anything that lay in my power for her."

10

Q. When was that ?

A. That was along—somewheres along in June.

Q. Of this year ?

A. Yes, sir.

Q. This last summer ?

A. Yes, sir.

Q. Go on.

A. Then I went up there again in July, the 4th day of July, and I was around there and I suppose that she thought that I had went back again and I staid at 20 my mother-in-law's all night, and staid there two nights. Sunday morning I started down the road—let on that I was going back home, and I made up my mind—the Saturday, as I was coming up, I met Lozier Carr, he had been down to Bloomingdale and came back to the place again and I met Sim Carr, and he told me that Walter had told him that he caught my wife and this Utter together in the woods again—and mother-in-law was alone—they were picking berries.

Q. Go ahead.

30

A. So then I made up my mind if there was any way to catch him and prove it with my own eyes, and I did.

Q. Tell us what you did ?

A. So Sunday I started away from the house in the morning—I didn't eat no breakfast at all—I started away from the house and went down the road and

went as far as Bloomingdale and back—came around in the woods and came up to a man by the name of Furniss, and I seen my wife come to the spring after a pail of water ; I seen her coming and he went down to meet her.

Q. Who ?

A. Edward Utter ; he came and after he met her there he staid there until she got very near the house, then he goes up home to his father's house for about
10 five minutes and after that he came and went down by the spring again and down by Marion's barn and he stood on Mr. Ritter's stoop and then I saw my wife starting down the road out of the house and then Utter started down the railroad and took the railroad down about where the cross road comes from Mocapin, in the direction of the turnpike, and I went back of her to get inside but I couldn't, then I went down till I got to Mr. Tappin's place and then I asked Mr. Tappin if he had seen my wife go by there.

20 Q. Constable Tappin ?

A. I don't know whether it was him or his brother—there are two of them there—anyhow and he said no, he hadn't seen her go by there but he had seen Utter come down the railroad and go up the wagon road and I went right back up the road and looked and upon my left-hand side as I was coming back to see if I could see any foot tracks and I did see where there were tracks of somebody going off the road and then I went in there and saw the two of them under a hemlock
30 tree ; they were laying down together.

Q. Go on.

A. As soon as he got his eyes upon me he made a jump up and down the hill and started through the rocks and grabbed for the sapling, and he must have went through the river, for his feet were all wet and his pants all were so, and I went back to my mother-in-law and seen my wife up the road ; when I got up to

her she grabbed me by the coat tail and held on ; " I want to talk to you for a few minutes," she said, and I said " I am willing to listen to you." She wanted to know, for she then said that she heard that I had a revolver—and wanted to know what I had done with it. I said " I haven't got no revolver " and I had none and I let her search every pocket and every place about me. Then I said to her " Let's get out of this, and don't stand here in the woods and be talking, for folks goes by here, and what do they think of us?" We went down 10 the road and then I said to her, "Are you going up home or down the road?" and I said "I want to go to the house with you and have a talk with you." She started up towards home and then I walked up to her and talked to her, asking her if she wasn't going to behave herself, and then I went up a little way and met Joe Tyndall and his wife going by and then he went by me—he had one of those blouses on, and buttoning it, he said he didn't want a word out of me ; she said before we left the woods that there would be 20 somebody there that would fix me ; Joe, I said, I have a right to talk as well as you have, Joe, and I don't know that I have done anything to you—I said " I am sure you havn't done anything to me and I don't think that I have to you to act this way." He said " Shut up your mouth or I will soon shut you up so;" I told him I had a right to talk as well as he had, so the four of us walked up the road together.

Q. Was this Sunday ?

A. Yes, sir ; and then we got to Mrs. Marion's, and 30 there I stopped. They went to her mother's house, and Mrs. Marion—it was pretty well towards night—she said, " Dan, come in and don't lay in the woods, and stay with us all night," and I did so, and staid there all night. Well, I started down on Monday morning to get a warrant for him, and I went to Mr. Donald's and told him my case—told him about it—told him

that it went so far I couldn't stand it no longer—I told him I didn't wish to harm her, but that man, I wanted something done to him, and he sent me up to Lawyer MacCue. I went to Mr. MacCue, and he told me to go up there and get the lawyer to write it down and he would sign it; and I went to Mr. MacCue and told him of the case, and he said he wanted to know the reason why the Justice didn't write it out, and he said that he was the one to do that; so I went back to him
 10 and told Mr. Donald what Mr. MacCue said—that he couldn't do anything like that without money and without having pay for it. I told Mr. Donald, so he said, “We can do nothing without some money,” he said.

Q. Now go on.

A. Then I went away from there to Hamilton again, and I laid in the woods there that night, for I was ashamed to stay among the neighbors, and the next day I seen Utter meeting her at the spring again, and then
 20 she was around home all the rest of that part of the day, and the next day I seen her go down the road again.

Mr. Gourley : What day was this ?

Witness : On Tuesday; I seen her go down the road, but it was not long before I seen Utter going down, too. I didn't bother going near them. I seen them two going into the woods; they were there half an hour, and then she came home; and
 30 Utter, he goes right below Nick Marion's house, and goes home that night, and that night he met her at the spring.

Q. Did he meet her again that night ?

A. Yes, sir; and Wednesday night I seen him meet her at the spring again. On Thursday morning I went out to Mr. Miggins, and I staid in the woods all that

night with nothing to eat. Wednesday I went to Mrs. Marion's again to get a drink of water; I stopped on the stoop, and she wanted to cook me something, and I said no, there was no use, for I couldn't eat, then.

Q. How long had you been without eating?

A. I think this was on Monday morning; I staid down to Sim Carr's stables and drank a cup of tea and eat a few mouthfuls of oatmeal, and from that time I could take nothing, and I couldn't eat; I was so discouraged and worked up, I couldn't eat nothing. 10

Q. Now, Thursday morning, please, what happened then, tell us?

A. Thursday morning I went out to this spring and got a drink, and then went over to Mr. Lindie's, and I was staggering around as bad as a man that was intoxicated, and I asked Mr. Miggins if he would let me have his knife to cut a cane, and he told me yes; he told me to come in and sit down; I went in, and I felt so bad that I couldn't dare sit still, and I saw a paper of tobacco there, and I said, "I am going to help 20 myself to a chew of tobacco," and he said, "All right, Dan;" and I saw this knife there, and I said, "Here is a little knife laying there, it is good enough to cut a cane;" and he said, "Yes;" and I took it and went to cut myself a cane, I was so weak; I wanted it to guide me; and I saw Edward after that coming out of his father's house again; and he was looking down that way quite a good while before he had seen my wife. After a while she went out of the house to him, waved her hand at him this way, and it wasn't 30 only a little while when he went behind the house and towards the swing-gate; and so he came back of the house with her. I took a drink, and then came out and staid in the brush, and at this same time, while he staid there, there were three ladies passed him, and while they were passing him he was standing there, and it was only a few minutes after they went by him before

I saw my wife start down that way. He stood on the bridge, and she went down there by him ; I stood on the hill looking at him ; she happened to look around, and I think she must have saw me, for she started right away from him ; he started one way and she the other ; she went up the railroad and he through the woods. Then I made up my mind she had seen me ; I said to myself I will go down and meet her, and have a talk with her ; I went down, and met this old gentleman
 10 down there—Mr. Edwards—I met him down there, and I said good morning to him, and he said, “Good morning ;” but the boy, I don’t remember seeing him at all then. Walking up the railroad after I passed Mr. Edwards, I said to her, “I want to know if you are going to stop these capers and behave yourself ?” and she wouldn’t give me no answer until we got up the railroad a little ways, and I put my hand upon her shoulder that way, and I said, “Why don’t you talk to me ?” with that she gave me a shove ; she didn’t want
 20 to talk to me, she said, and then told me that, “I have been with him, and I will go with him whenever I please.” Then I remember hitting her with a stick, but where I hit her I can’t tell you. I remember hitting her with a stick, and she grabbed me, then she went down, and she asked me to let her up ; and I did, and she grabbed me again, then went to tear at my face the moment I let her up, then I kind of gave her a little jerk with my hand, and down she went again, and after that she grabbed me again there in the hand
 30 with her teeth, and took a piece out, and after that I don’t remember any more what was done.

Q. You were quite badly cut in the throat, too ?

A. Yes, sir.

Q. Whereabouts ?

A. Right there in front—what was done after that I can give no kind of answer at all, but I don’t see how it is that I ever laid the weight of my hands upon

her, for the woman I always loved better than I did myself.

Q. Now, did you ever intend to inflict bodily harm upon that woman ?

A. No, sir ; I never had such a thing in my mind or either one thought of it, but I had said about him, if I caught him in the woods with her, either me or him would take a licking—I said that.

Q. Have you ever had a conversation with her to go and live with her, and what did she say ? 10

A. I asked her, last spring before she left Fish-kill, she said “ I want you to let me go after the things and fetch him along.”

Q. Fetch who along ?

A. Edward Utter, and live with us, and I said no, I will not consent to it, I want to get away from him from there on account of it, that is what I want—to get away from that place—she has coaxed me there for a whole week to get my consent to do that and I wouldn't. 20

Q. That morning that you saw her there on the railroad, did you know that she was going down there ?

A. No, sir ; I didn't. I was thinking about her coming down there—I didn't think of such a thing.

Q. Where was you the first time that she acknowledged that she had been bad with Utter ?

A. Haverstraw.

Q. That was the first time ?

A. Yes, sir. 30

Q. This morning that you met her on the track—this last time that you saw her alive—what did she say about that ?

A. She said that she had told me that she had been with him and she would go with him whenever she had a mind to.

Q. What made you leave Haverstraw ?

A. She wouldn't stay there no longer.

Q. Is that the reason that you left there ?

A. Yes, sir ; she always had everything her own way—whatever she said, why, it went so. I always gave into her that way.

Q. Did you ever at any time—up to the time of her death—lay waiting for her to do her any harm or have any intention of killing her ?

A. No, sir ; none whatever—I never could have and
10 that is all that I have ever done ; think too much of her about that, I thought more about trying to coax her than anything else.

Q. You are a mechanic ?

A. My business is to work whenever I can get it.

Cross-examination by Mr. Gourley :

Q. During these married years, how much time was spent by your wife at her mother's home ?

A. Some three or four years—five years—four or
20 five years.

Q. Of the fourteen ?

A. It wasn't that—I was there living to my mother's house in the biggest part of the time.

Q. Four or five years ?

A. About that time ; yes, sir.

Q. Did you support her during this time ?

A. Yes, sir ; always ever since I have been married.

Q. This time that you say that she left you, don't
30 you know that she left you because you wouldn't support her ?

A. No, sir.

Q. Because you got drunk and wouldn't support her ?

A. No, sir ; she never said such a thing.

Q. Don't you know that she said that and told her mother so ?

A. She didn't tell me.

Q. Wasn't that the reason she left Fishkill and the other places you have mentioned?

A. No, sir.

Q. You say that you slept out in the woods during these two nights preceding this homicide?

A. Yes, sir.

Q. Were those the only nights you slept in the woods?

A. Yes, sir.

Q. Haven't you done that many a time? 10

A. Well, I have before I was married, but not after I was married, no, I have never done it before I was married.

Q. Did you ever see your wife and Utter having anything to do with each other in a criminal way, having connection with each other at all.

A. No, sir; but she has told me that she had.

Q. Did you ever find that out yourself?

A. No, sir.

Q. Have you said to anybody that you had no evidence of that kind? 20

A. No, sir.

Q. That you ever saw it?

A. No, sir.

Q. Did you say to Constable Tappin on the Saturday preceding this homicide, speaking to him about the matter, that you had no evidence of Utter and your wife being together in a criminal way?

A. I don't remember of saying that to him.

Q. Constable Tappin? 30

A. I don't remember.

Q. Will you say that you didn't say that?

A. I don't remember it.

Q. And at that time were you under the influence of liquor?

A. I had been drinking a little.

Q. Taking a good deal at that time?

A. Not so much—had taken some.

By the Court: What time are you talking about—what time in July was it that you say that you had been taking some drinks.

Witness: On Saturday, the 6th, I had been drinking and had a little; yes, sir.

Q. Show it in your conversation and appearance?

10 A. I don't think it was out of the way at all.

Q. Were you not under the influence of liquor when that occurred when you went to Donald, the Justice?

A. No, sir.

Q. On that 6th of July—that was Saturday?

A. Yes, sir.

Q. Where had you been on the 5th—the day before?

A. That was Friday, I think I have been—I know I had been to Butler and came back.

Q. Were you also on that day under the influence of
20 liquor?

A. I had drank a little.

Q. On the 4th as well, were you not?

A. Yes, sir; I had a few drinks.

Q. And on the 3rd, too?

A. Yes, sir.

Q. And on the 2nd?

A. No, sir; I didn't on the 2nd of July.

Q. Well, on the 3rd, where were you?

A. I was here in Paterson.

30 Q. Taken up by a policeman for being drunk that day?

A. I don't know whether I was taken up for being sober or drunk.

Q. Drunk and disorderly at the depot on the 3rd of July?

A. I was in Montview in that afternoon.

Q. Were you not here in Paterson that day?

A. Yes, sir ; I was.

Q. And arrested here ?

A. Yes, sir.

Q. For being drunk and disorderly ?

A. Well, I didn't know that.

Q. Where had you been working last preceding the 3rd of July ?

A. To Montview.

Q. Doing what ?

A. Brickyard.

10

Q. That was the last place you had worked ?

A. Yes, sir ; I worked on the 13th of May up to that time.

Q. When was the last time that you visited your wife's home before this 11th ?

A. That was in June some time.

Q. Not during the month of July at all ?

A. No, sir.

Q. When in June, do you know ?

A. Somewheres along the latter part of June.

20

Q. You went there drunk ?

A. No, sir.

Q. Didn't your mother-in-law refuse to allow you in the house until you came back sober ?

A. No, sir ; I don't know about being drunk, I couldn't—I had no money, I had no money to pay.

Q. And hadn't you been at that house several times during that month in that condition asking for your wife ?

A. No, sir ; I was over there twice while I worked 30 at Montview—that was along in the latter part of May.

Q. Did you ever charge Utter with being intimate with your wife in a criminal way ?

A. I told him I had heard of it—I told him that on Saturday.

Q. Saturday, the 6th ?

A. Yes, sir; what I was told about their being in the woods together.

Q. That was all that occurred then?

A. Yes.

Q. Then, on this next Saturday, you saw them down together under the hemlock tree?

A. Yes, sir.

Q. And on Monday you saw them go into the woods, but you didn't follow them?

10 A. Yes, sir.

Q. And on Tuesday you saw them?

A. Yes, sir.

Q. But didn't follow them?

A. No, sir.

Q. What were you doing about that place?

A. Because I had no other place to go to. I was staying in the woods then.

Q. You had no money?

A. No, sir.

20 Q. No work?

A. No. I was so discouraged that I couldn't do any work.

Q. When you saw this man Utter go into the woods, and saw your wife with him, why didn't you follow them?

A. Because I was getting tired of following him; I didn't want to follow them any more. I had caught them once, and that was enough.

Q. So that night you stayed out in the woods.

30 A. Yes, sir.

Q. And the next day you saw them again, I understand, go down toward the brook—Wednesday?

A. When she went to the spring and he met her there. She couldn't go to the spring but what he met her.

Q. You didn't follow them at all?

A. No, sir; because I didn't want to follow them.

Q. On Wednesday afternoon again you saw them at the spring?

A. Wednesday, I did.

Q. That was the last time that you saw them—on Thursday morning?

A. Yes, sir.

Q. That night you stayed out in the woods?

A. Yes, sir.

Q. Why did you stay out in the woods?

A. Because I was so discouraged I couldn't go any- 10
where else, and I made up my mind that I would lay there and die.

Q. Isn't it a fact that on that day, on Wednesday or Tuesday, you were hiding in the woods.

A. No, sir; I never did.

Q. Isn't it a fact that you lived behind some large stones on Wednesday, waiting for your wife to come out?

A. No, sir; I was away above the house, laying on top of that large stone, looking down at them, watch- 20
ing them, to see what they were doing together.

Q. Watching them from behind the stone?

A. No, sir; I was on the stone.

Q. They couldn't see you there?

A. Yes, sir; they could if they were watching.

Q. You were watching from this rock, and your opinion is that they could see you?

A. Yes, sir.

Q. You say that you didn't intend to harm her?

A. No, sir. 30

Q. Were you not thinking about doing any harm to her?

A. No, sir. I didn't wish to touch her at all, in no way.

Q. What did you cut this stick for?

A. To guide myself with, for I was a-staggering like a man that was intoxicated with drink.

Q. Did you tell Miggins it was to steady yourself?

A. Yes, sir ; I said so.

Q. And you cut that stick for that purpose?

A. Yes, sir, and for nothing else.

Q. Well, then, when you met your wife on that railroad, you walked behind her for a distance?

A. No, sir.

Q. With her?

A. Right beside her.

10 Q. How did you keep up with her, being so feeble?

A. She wasn't a fast walker herself.

Q. You could stagger along and keep up with her?

A. Yes, sir.

Q. Now, then, why didn't you cut a much stouter stick, if you needed it?

A. I thought that was stout enough.

Q. To be used as a cane?

A. Yes, sir.

Q. This served your purpose?

20 A. Yes, sir.

Q. Now, how was it that you began to use this cane upon your wife?

A. That is something that I couldn't tell you ; I must have been out of my mind in some shape or form.

Q. Do you remember using the stick?

A. Yes, sir ; remember hitting once.

Q. Only once?

A. That's all I remember hitting with the stick, and I can't say where I hit her.

30 Q. But up to this point your memory is quite clear as to seeing Utter and where you saw him?

A. Yes, sir.

Q. Your conversation with him and between you and your wife, when you had the conversation?

A. Yes, sir.

Q. And the other things that you have related, the

conversation with your wife on Wednesday and under the hemlock tree ?

A. Yes, sir.

Q. And you were quite correct as to the conversation between you and your wife—are quite clear ?

A. She didn't speak to me at all Thursday ; I spoke to her when she gave me the shove.

Q. But you walked abreast and didn't speak to her ?

A. Well, I walked all the way up.

Q. You are quite accurate up to that point ? 10

A. Yes, sir.

Q. And your memory is clear about it ?

A. Yes, sir.

Q. And when does your memory become confused about what actually occurred ?

A. The first I remember was down—when I stabbed myself—I took it to be down at Bloomingdale.

Q. From the time that you first struck her with the stick until you reached Bloomingdale your mind is a blank ? 20

A. Yes, sir ; it is.

Q. Has your mind just become a blank lately or always been.

A. Yes, sir.

Q. You never could remember what occurred from the time that you lifted this stick to strike your wife until you reached Bloomingdale ?

A. No, sir ; I don't remember then only just what I heard.

Q. You remember raising the stick ? 30

A. Yes, sir ; I mean about the rest of it.

Q. You haven't told us anything—what other part of it.

A. No, sir.

Q. You told us that up to the time you struck your wife you are quite accurate ?

A. Yes, sir.

Q. And after you reached Bloomingdale you say you don't remember anything about it ?

A. No, sir.

Q. And you haven't any remembrance from that day until now ?

A. What do you mean ?

Q. On the next day, for example, do you remember what occurred ?

A. Yes, sir ; on the next day I do.

10 Q. Do you remember on the next day striking your wife with a stick ?

A. No, sir.

Q. Do you remember using the knife ?

A. No, sir ; I don't.

Q. Then you haven't remembered at any time using the knife at all ?

A. No, sir.

Q. Do you remember her being knocked down ?

A. No, sir ; I don't think she was knocked down.

20 Q. I understood you to say in your direct testimony that she got knocked down and grabbed you again ?

A. She grabbed me after I had hit her with the stick and she fell down and then she asked me to let her up again and I did so and then she grabbed me and bit a chunk out of my hand.

Q. As she was down on the ground ?

A. Yes, sir.

Q. Was that on the track ?

A. It was off the track.

30 Q. On which side of the track ?

A. Now I couldn't tell you which side it was on ?

Q. Near the cut there ?

A. Somewhere near the cut there.

Q. This side of the cut ?

A. No, sir ; on the upper end of the cut, where I remember last.

Q. Well, was your wife knocked down on the ground ?

A. No, sir.

Q. Was she down flat on the ground ?

A. No, sir.

Q. How did she go down ?

A. She grabbed me—she went to club me and she must have caught her foot, for all I know—that I couldn't explain to you.

Q. You remember her being down on the ground, 10 but how she got down you don't know ?

A. Yes, sir.

Q. Well, you remember her getting up again ?

A. Yes, sir ; she asked me to let her up and I did so.

Q. Then you don't remember saying " I killed her and now I will kill myself."

A. No I don't remember seeing that man after I met him on the railroad and the boy I don't remember seeing at all.

20

Q. Don't you know where you let the stick go ?

A. No, sir ; I don't know what became of the stick.

Q. Are you sure of that ?

A. Yes, sir.

Q. Were you examined by Justice Senior ?

A. Yes, sir.

Q. The next day at the jail ?

A. Yes, sir.

Q. On the 12th ?

A. Yes, sir ; I think I was.

30

Q. Well, don't you remember ?

A. Yes, sir ; I was.

Q. You remember that ?

A. Yes, sir ; somebody was there but I couldn't tell you who it was.

Q. That your signature ?

A. Yes, sir.

Q. Did you tell Tappin, the constable, that you had killed your wife?

A. No, sir.

Q. Did you say in the jail in the presence of a man named Dougherty that you had killed your wife?

A. Not that I remember.

Q. Did you say that you had watched for her for three days in the woods to kill her?

A. No, sir.

10 Q. Did you say that you were not satisfied that she was dead—that you wanted Utter arrested?

A. No, sir; I didn't.

JESSIE C. PAULISON, being duly sworn, testifies as follows:

By Mr. Ward:

Q. What is your business?

20 A. Night operator at Butler.

Q. And you sell tickets there at night?

A. Yes, sir.

Q. On the railroad?

A. Yes, sir.

Q. Do you know Edward Utter?

A. I saw him that night—knew him after the night he came to the depot.

Q. Did you know Mrs. Ackerman that was killed afterwards?

30 A. No, sir; I didn't know her until after she was murdered.

Q. Do you recollect seeing Mr. Utter at the depot Christmas—do you recollect seeing her there?

Objected to.

Objection overruled.

Q. Did you see him there about Christmas getting some tickets—Utter?

A. Yes, sir.

Q. Mrs. Ackerman with him?

A. Yes, sir ; I suppose it was her at that time.

Q. Remember what happened there—do you remember Ackerman coming there afterwards?

A. Yes, sir ; on Saturday night after that he asked me if I saw anything of his wife with Mr. Utter, and I told him that I had—that Utter had broke a \$5 bill and bought two single tickets for Jersey City.

Q. Was that about train time?

10

A. Yes, sir ; about 25 minutes before the train left for Jersey City.

Q. And after the train went, did you see them there?

A. No, sir.

Cross-examination by Mr. Gourley :

Q. Did you know Utter?

A. No, sir ; not until after.

Q. Did you know Ackerman?

A. No, sir.

20

Q. Did you know Mrs. Ackerman?

A. Only from what I heard after the accident.

Q. You are night operator where?

A. Butler.

Q. Did many passengers come there?

A. Yes, sir ; quite a few.

Q. What time of the day was this train?

A. 5.16 in the morning.

Q. You are not particular in noticing those who are buying or not?

30

A. No, the only way that I remember this, Mr. Utter, he has a black side upon his face—that is the only way I can remember him.

Q. Who the woman is, you don't know?

A. No, sir.

Q. It may have been Mrs. Utter?

A. No.

By Mr. Ward: Did you see the woman after Mrs. Ackerman was dead?

Witness: Yes, sir.

Q. Are you certain that six months afterwards you could recognize the woman?

A. Yes, sir.

Q. Who bought the tickets?

A. Mr. Utter.

Q. Where was the woman?

10

A. Out in the waiting-room—had a shawl on.

Q. And you are certain six months after the woman is dead that it was that woman?

A. Yes, sir.

DANIEL ACKERMAN, recalled.

Q. Did your wife tell you anything about going
20 away that Christmas, and who she went with?

A. She told me that she went with Edward Utter, and she told me that she didn't think that I would be at the house.

CARRIE MARION, being duly sworn, testifies as follows:

By Mr. Ward:

30 Q. Where do you live?

A. Smith's mills.

Q. You live near Utter's house?

A. Yes, sir.

Q. You remember the morning on which Mrs. Ackerman was killed?

A. I do.

Q. Did you go down the railroad that morning?

A. We went down about 15 or 20 minutes before the murder was done—down towards the track—we were berrying—me and my sister-in-law and niece.

Q. Did you see Utter that morning?

A. Yes, sir.

Q. Where did you see him?

A. Under the pine trees, what we call the flats.

Q. Near where this occurred?

A. Well, it isn't a great ways from where this occurred.

Q. You know where that little swing-gate is? 10

A. Yes, sir.

Q. Was it down towards Bloomingdale—down the railroad or up?

A. It was right up towards the swing-gate.

Q. Towards the gate?

A. Yes, sir.

Cross-examination by Mr. Gourley:

Q. A good many persons went out berrying that time? 20

A. Yes, sir.

JACOB FLEMMING, a witness on behalf of the defendant being duly sworn, testifies as follows:

By Mr. Ward:

Q. You are a half brother to this defendant?

A. Yes, sir.

Q. Did you live at Fishkill any time last summer? 30

A. A year ago last fall—I lived in Fishkill for the last 7 years.

Q. Do you remember Mr. Ackerman and his wife going there to live?

A. Yes, sir.

Q. When was that?

A. I couldn't tell the exact month; it was a year ago last fall.

Q. Do you recollect where she went from there?

A. Only what I have heard.

Q. Did you hear about her going away?

A. Yes, sir.

Q. How was it?

A. Daniel Ackerman came to my house—

10 Objected to ; objection overruled.

A. Daniel Ackerman came to my house some time last fall—I couldn't tell you exactly the month—it is past my recollection now—and he came to my house and told me his wife had left him, and I didn't ask any questions why she left him.

By the Court : Anything more transpire between you and him ?

20 Witness : Then he went to my brother's to board ; he lived about a mile from where I lived.

Q. Did his wife go there ?

A. Yes, sir.

Q. What time did she come there ?

A. I think it was last February ; I am not sure.

Q. And did she live there with him ?

A. She staid in the same house with him.

Q. What became of him ?

30 A. I know she went away.

Q. How did she go away ?

A. She went away in the spring.

Q. Do you know ?

A. Yes, sir ; she left my house.

Q. Did he go with her ?

A. No, sir.

Q. Did he know that she was going away ?

A. No, sir ; I don't think he knew.

Q. Did she tell you anything about her going away ?

A. No, sir ; she told my wife.

Q. And where did he go after that ?

A. I couldn't tell you ; he went away a week after that.

Q. Where was he when she went away from there ?

A. At Fishkill on the Hudson ; she left him at Fishkill.

Cross-examination declined.

10

WILLIAM L. MACCUE, witness on behalf of the defendant, being duly sworn, testifies as follows :

By Mr. Ward :

Q. You are a counsellor at law and reside at Butler ?

A. An attorney at law.

Q. Do you know the defendant here ?

A. I have known him since July last.

20

Q. Did you see him in July last ?

A. Yes, sir.

Q. Do you recollect about the tragedy that happened there about his wife ?

A. Yes, sir.

Q. Now, did you see him at your place ?

A. Yes, sir ; two or three days prior to the crime.

Q. What was he doing there ?

A. I think it was Monday morning, and the crime was committed on Thursday—I don't just recollect— 30
he came up there to see me ; he came into my office—I didn't know who he was—I was in the rear part of the yard doing something ; when I came in he said something to me about a warrant, and I think I asked him who he was. I don't remember of knowing him prior to that time. Then he told me what he wanted a warrant for, and said that he had been down to

Squire Donald's, who had sent him to me. This warrant was to have Utter and his wife arrested. I think it was both of them, but one anyhow, and probably both of them.

Q. Did you make out any papers for him?

A. No, sir; I told him that the proper place for him was over in Passaic county, and I resided in Morris county. I told him, as he said upon the witness stand, that if I took his case he would have to pay me.

10 Q. How did he appear to you?

A. He undoubtedly was excited. He came in, and his manner to me showed that he was excited; he told me that he had caught his wife and Mr. Utter in the woods in the act, and he said that he had caught them in the act—in the act of adultery, and she said this, and I told him to go to the Justice for a warrant, and if he wanted to employ me. Then he said he had no money, that he was poor, and he went out, and that was the last I saw of him.

20 Cross-examination declined.

JAMES VAN ORDEN, witness for defendant, being duly sworn, testifies as follows:

By Mr. Ward:

Q. You know the defendant?

A. Yes, sir.

Q. Do you remember the time of this tragedy up
30 there?

A. Yes, sir.

Q. Did you see Ackerman on the Sunday before that?

A. Yes, sir.

Q. Where was he?

A. He came to my house, walking in the yard, and I was sitting on the stoop. He asked me for a drink

of water. He got a drink of water, and he came and sat beside me and said to me, "You see that man there," and I said, "Yes." He said, "Edward Utter," and I said, "I don't know, it looks like him;" and he said, "She has been to the spring for a pail of water, and they are going away to-night ; I know it, and I will be down to his sister's as soon as they are ;" then I walked back and took the water from him, and then I looked back to where this man stood ; I looked on the railroad and saw a man going down the railroad. I supposed it was the same man. Then he went on the wagon road to see his wife, but then I didn't see anybody, only Dan there, going as fast as he could, until he was out of my sight ; but I didn't see her. 10

Cross-examination by Mr. Gourley :

Q. What day was that ?

A. This was on Sunday, the seventh.

20

ELLEN VAN VALEN, witness for defendant, being duly sworn, testifies as follows :

By Mr. Ward :

Q. Did you know Mrs. Ackerman in her lifetime ?

A. I did.

Q. Did you know young Utter, the man with the scar upon his face ?

A. No, sir.

Q. Did you ever see Mrs. Ackerman in company with the man at your place in Cresskill ? 30

A. Never.

Q. Did you ever see Mrs. Ackerman at your place ?

A. Yes, sir.

Q. Anyone with her ?

A. I saw her one time with her husband.

Q. Anyone else?

A. No, sir.

Cross-examination by Mr. Gourley :

Q. Her father lives there?

A. Yes, sir.

THOMAS VREELAND, witness for defendant, being
10 duly sworn, testifies as follows :

By Mr. Ward :

Q. Where do you reside?

A. Echo Lake.

Q. You are a minister of the gospel?

A. Yes, sir.

Q. Do you know the defendant?

A. I do ; I think I have known him about seven
years.

20 Q. He worked for you?

A. Yes, sir.

Q. Do you know what his character has been for
being a peaceable, inoffensive man during that time?

A. While he worked for me, perhaps four or five
months, he was a peaceable, inoffensive, sober, honest,
industrious man ; that's all I know about him, and
nothing to the contrary since.

Cross-examination by Mr. Gourley :

30 Q. What work did he do for you?

A. Work on the farm.

Q. What duties?

A. Picking stones and drawing things around?

Q. When?

A. About seven years ago.

Q. Since then you have had no opportunity to
judge of him?

A. I have seen him several times.

Q. Occasionally meet him ?

A. Yes, sir ; that's all.

CHARLES COOPER, witness for defendant, being duly sworn, testifies as follows :

By Mr. Ward :

Q. Where do you reside ?

10

A. Greenwood Lake.

Q. Keeping a hotel there ?

A. Yes, sir.

Q. How many years ?

A. Twenty.

Q. Do you know the defendant here ?

A. I used to know him when he lived there. It is ten years since he left there. I have heard of his being there on visits.

Q. Do you know what his reputation is ?

20

Objected to.

Objection sustained.

Cross-examination declined.

HANNAH MEKINS, witness for defendant, being duly sworn, testifies as follows :

By Mr. Ward :

30

Q. Where do you reside now ?

A. Ewarts.

Q. Do you know the defendant ?

A. Yes, sir.

Q. How long have you known him ?

A. Well, I have known him since he was s small boy —that's a good while ago.

Q. And have you known him of late years as well?

A. No, sir; only as a boy.

Cross-examination declined.

SIMEON CARR, a witness for defendant, being duly sworn, testifies as follows:

By Mr. Ward:

10 Q. Where do you live?

A. On the road that leads from Butler to Echo Lake.

Q. You remember the time that Mrs. Ackerman—the day that Mrs. Ackerman was killed?

A. Yes, sir.

Q. Had you seen her before that and how long had you seen her before that day?

A. On Sunday.

Q. On the Sunday before?

20 A. Yes, sir.

Q. Where did you see her?

A. I seen her coming up the road with Mr. Ackerman and Joseph Timball and her sister.

Q. Did you see her when she went down the road?

A. No, sir.

Cross-examination by Mr. Gourley:

Q. Did you see Ackerman a day or two before that?

A. Yes, sir.

30 Objected to as not being cross-examination.

JERRY MORSE, witness for defendant, being duly sworn, testifies as follows:

By Mr. Ward:

Q. Where do you live?

A. Butler.

Q. How long have you known the defendant here—
do you know him?

A. Yes, sir.

Q. How long?

A. I presume ten or twelve years.

Q. Has he worked for you?

A. Yes, sir.

Q. Within how long a time?

A. Within two years, he left me last fall a year ago? 10

Q. Do you know what his reputation has been for a
peaceable inoffensive man?

Objected to.

Objection overruled.

A. It is only about a year since he left me; for two
years he did work for me during the winter.

By the Court: Mr. Ward wants to know what
his general reputation was for peaceableness? 20

Witness: So far as I know it was good; he
was peaceable and inoffensive so far as I know.

Cross-examination by Mr. Gourley:

Q. What was he doing for you?

A. Chopping wood and work in general—any kind
of work in the woods.

JACOB RIERSON, a witness for defendant being duly 30
sworn, testifies as follows:

By Mr. Ward:

Q. Where do you live?

A. Greenwood Lake.

Q. And this defendant, what relation is he of yours?

A. I am an uncle to him.

Q. And has he been around your place a good deal for the last number of years?

A. Yes, sir; more or less every year.

Q. Do you know what his character has been for a peaceable inoffensive man?

A. I have known him from his cradle all my life, never known him to be in any trouble.

Cross-examination by Mr. Gourley:

10 Q. Is that the Greenwood Lake reputation?

A. Yes, sir.

Q. You are a kind of fisherman up there?

A. No, sir.

Q. Do you think much of a man who hits hard or swears up there?

Objected to.

Q. What have you to say about that?

A. What?

20 Q. You people up there don't think much of a man who doesn't swear—you are guides on the lake up there?

A. Why, I say I have known him from his cradle up and I have known no bad of him.

Q. You say that?

A. Yes, sir; to tell the truth.

CHARLES MORSE, witness for defendant, being duly
30 sworn, testifies as follows:

By Mr. Ward:

Q. Where do you reside?

A. Bloomingdale.

Q. How long have you known Ackerman?

A. Since he was a kid.

Q. Have you known him of late years?

A. Yes, sir.

Q. Up to the time of this occurrence up there ?

A. Yes, sir ; he lived by me for two years.

Q. Did you know what his reputation is ?

A. I have never known bad about the man except this and I didn't see this.

Cross-examination declined.

FRANK SMITH, witness for defendant, being duly sworn, testifies as follows : 10

By Mr. Ward.

Q. You live at Bloomingdale ?

A. No, sir, at Smith's mills.

Q. Remember when this killing took place there ?

A. Yes, sir.

Q. Remember the day ?

A. Yes, sir.

Q. Did you see the defendant that morning ?

A. No, sir. 20

Q. Did you see him anywhere—did you see him with Justice Donald ?

A. Yes, sir.

Q. Do you recollect what he said when he went there ?

A. No, sir.

Q. Did he say anything ?

A. I was there quite a while and I don't remember him saying anything there.

Cross-examination declined. 30

ABRAM MABIE, witness for defendant, being duly sworn, testifies as follows :

By Mr. Ward :

Q. Do you remember the morning of this tragedy there ?

- A. Yes, sir.
 Q. You recollect what time it was ?
 A. No, sir ; not exactly.
 Q. Did you see her after she was dead ?
 A. No, sir ; but before I did.
 Q. How long before ?
 A. I didn't stay there until she was dead.
 Q. Where did you see her ?
 A. Up at the swing-gate.
 10 Q. Did you see Utter before that ?
 A. Yes, sir ; I was down near the railroad crossing.
 I seen him going over the bridge this way with her—
 she was going up towards this way—he was going to-
 wards Marion's house.
 Q. That is one of the houses on the hill ?
 A. Yes, sir ; the nearest house to the railroad.
 Q. Was that before the tragedy ?
 A. No, sir ; afterwards.
 Cross-examination declined.

20

JOHN FLEMMING, witness for defendant, being duly sworn testifies as follows :

By Mr. Ward :

- Q. You are half brother to this defendant ?
 A. Yes.
 Q. You remember of his coming to live at Fishkill
 with his wife.
 30 A. I remember him coming there first.
 Q. And then she came after him ?
 A. Yes, sir.
 Q. When was that ?
 A. I think it was sometime in February.
 Q. Of last year ?
 A. Yes, sir.
 Q. And did they live there together ?

A. Well, they staid with his brother-in-law, his wife's sister's husband.

Q. And do you remember of her going away ?

A. I heard of it at the time.

Q. Do you remember of her going away ?

A. I heard of it at the time.

Q. Do you know whether he went away too.

A. Yes, sir ; I do remember it.

Q. And did he know or not of her going ?

A. I don't think that he did.

Q. He staid there after she went away ?

A. Yes, sir.

Q. How long ?

A. About a week.

Q. Did he go away then ?

A. Yes, sir.

Cross-examination declined.

10

The State in Rebuttal.

20

GEORGE B. SENIOR, being duly sworn, testifies as follows :

By Mr. Gourley :

Q. You are the Recorder of the City of Paterson ?

A. Yes, sir.

Q. In July last, were you Justice of the Peace ?

A. Yes, sir.

Q. Did you examine Daniel Ackerman, the defendant upon this charge, take his written examination ?

Objected to.

Question allowed.

A. I did.

Q. Was the defendant notified that he need not answer any questions unless he chose to ?

30

A. I told the defendant—I read the charge to him and told him that I was about to ask some questions with reference to the charge against him and it was his privilege to answer or refuse to answer—the answer must be entirely voluntary—he did not have to answer any questions.

Q. After that notification did you proceed to examine him?

A. I did.

10 Q. Did you reduce that examination to writing?

A. I did.

Q. Is that it?

A. Yes, sir.

Q. Is that signature to that paper the signature of Daniel Ackerman, the defendant?

A. Yes, sir.

Q. And have you signed it?

A. I have.

20 Cross-examination by Mr. Ward:

Q. Was that after a warrant was made out for commitment and he had been committed to the jail for murder?

A. Yes, sir.

By the Court: That is in your own hand writing?

Witness: Yes, sir.

Counsel for prisoner objects.

Objection overruled.

30 Exception.

Re-direct by Mr. Gourley:

Q. What did you ask him with reference to the homicide—with reference to the killing of his wife?

A. I asked him if he struck his wife with a club and he said he had and I asked him how often and he said once that he could remember—he knocked her down;

I asked him if he cut her with a knife and he said he had, and I asked him what kind of a knife, and he described it.

Q. Tell us what he said about it?

A. An ordinary pocket-knife—white handled, one of the bones was off on one side—a knife about that size ; I never saw the knife before.

Q. Until now ?

A. Until now.

Q. Did he say anything about where he used the knife upon her ?

A. In the neck.

Q. That statement was written down at the time?

A. Yes, sir.

Q. Refresh your memory from that ?

A. Well, I can remember without looking at it.

Q. What had he to say about where he struck his wife and with what he did it ?

A. [Witness reading]. He struck her on the head with a stick, she then grabbed me and I grabbed her. 20

Objected to.

Objection overruled.

Exception.

[Witness, continuing]: She asked me to let her up and I did so, then she twiggged me again and bit me on my left hand [witness reading]: I then threw her down and cut her throat with the knife that I had in my pocket.

30

Cross-examination by Mr. Ward :

Q. What day was that ?

A. The 12th of July.

Q. That was the day after this accident had happened?

A. Yes, sir.

Q. And who was with you ?

A. When—when this examination was taken ?

Q. Yes.

A. Constable Tappin, Mr. Buckley and Coroner Goodridge.

Q. Where was he then when he made that statement ?

A. In the office of the jail.

Q. Had he his neck wrapped up at that time ?

A. He had.

10 Q. What was his condition at that time ?

A. He was perfectly calm and quiet.

Q. Perfectly calm and quiet ?

A. Yes, sir.

Q. Did he look like a well man at that time ?

A. Yes, sir.

Q. At this inquest, did you go up there ; who called upon you to go up there ?

A. Coroner Goodridge.

Q. Were you present at the coroner's inquest ?

20 A. No, sir.

Q. Inquest had not been held then ?

A. No, sir.

Q. Do you know whether he had been in the hospital or not ?

A. Yes, sir ; I arraigned him in the hospital on the complaint, on the 12th of July.

Q. The same day that you took that ?

A. Yes, sir ; the same morning.

Q. Why was he in the hospital if he was a well man ?

30 A. He was brought down and put in the hospital on account of his throat being cut.

Q. Then you arraigned him in the forenoon and committed him ?

A. No, I didn't commit him until he was examined.

Q. You had the commitment made out and signed by you ?

A. Yes, sir ; and I kept it in my pocket.

JAMES DOUGHERTY, being duly sworn, testifies as follows:

By Mr. Gourley:

Q. Are you employed in the county jail?

A. Yes, sir.

Q. And was in July last?

A. Yes, sir.

Q. Were you present at the time the Justice examined the defendant upon this charge?

A. Yes, sir; I was in the office at the time. 10

Q. Tell us what you heard the Justice say to the defendant about the knife, cutting his wife and anything and what the defendant said in response to that.

Objected to.

Objection over-ruled.

Exception.

A. The statement—that is all I know—the statement. 20

Q. Well, did you hear him yourself?

A. I heard him say that he used the knife.

Q. How did he use it?

A. He didn't say.

Q. Did he say where he used it?

A. No, he said that he used the knife upon his wife—that's all I know.

Cross-examination by Mr. Ward: 30

Q. Is that the way he said it?

A. About that way.

JOHN B. GOODRIDGE, witness for State, being duly sworn, testifies as follows:

By Mr. Gourley:

Q. In July last, were you coroner in Passaic?

A. Yes, sir.

Q. Were you present in the jail at the time this defendant was examined by Justice Senior?

A. Yes, sir.

10 Q. State what conversation took place about this wife and where the defendant struck his wife?

Objected to.

Objection over-ruled.

Exception.

A. I understood the defendant to state that he stabbed his wife in the neck.

Q. With what?

A. With a bone knife; it was a white handle, and one
20 side off.

Q. He described the knife?

A. Yes, sir.

Cross-examination by Mr. Ward:

Q. Was anybody else by then?

A. Yes, sir; Constable Tappin had been there; we had just brought the prisoner in from the hospital.

Q. Was anything said to him about the knife?

A. He was informed by the Justice that he didn't
30 need to answer.

Q. Was anything said to him about the knife?

A. He made the statement himself about the knife.

Q. And you just brought him from the hospital to the jail?

A. Yes, sir.

Q. Who brought him?

A. Brought him in the ambulance myself, and one

of the officers from the police station—I forget now his name—the ambulance driver and Constable Tappin was along.

The State rests.

Defendant in Rebuttal.

DANIEL ACKERMAN recalled.

By Mr. Ward:

10

Q. Do you remember of being brought to the jail as spoken of by Justice Senior?

Objected to ; objection overruled.

A. I don't remember anything about it—I don't remember I had eaten anything that night.

Q. What condition were you in when you were in there?

A. I was in such a condition that I didn't feel like 20 standing upon my feet ; I had to keep drinking water all the time for fear of falling into a faint.

Cross-examination by Mr. Gourley :

Q. Please write your name.

Objected to.

By the Court : Do you wish to write your name, Mr. Ackerman?

Witness : No, sir, I don't wish from Mr. Ward's advise.

By the Court : Do you wish to write your 30 name, Mr. Ackerman?

Witness : No.

JUDGE'S CHARGE.

GENTLEMEN OF THE JURY: The prisoner is indicted for the crime of murder, said to have been committed by the killing of his wife, in this county, on the 11th day of July last.

It is conceded that on that day his wife came to her death through a wound inflicted by a knife in the hands of the prisoner, that knife having been used to give her a fatal stab in the throat. Death so occasioned raises a presumption that the slayer is guilty of murder, but whether the jurors' verdict shall find the defendant guilty of that crime will depend upon whether there be evidence in the case to indicate either the total absence of crime or the presence of only a lesser grade. It is the undoubted province of the jury to define the grade of crime of which the prisoner is guilty, if he be guilty at all, and also to say whether he be guilty at all. And without intending to infringe in the least on this province, which belongs to the jury, yet in what I have to say I shall treat the case as one in which guilt is clear, and in which the only question is as to the grade of the offence; for I am unable to take any view of the testimony in this case, or to see how any view can be taken of the testimony in this case, which is consistent with entire innocence on the part of the prisoner.

30 This homicide with which he stands charged may render him guilty of any one of three grades of crime. The lowest of these grades is called manslaughter; the highest of these grades is called murder of the first degree, and the grade between them is called murder of the second degree. There is one aspect of the case which, if the jury believe it to be the true one, will warrant the jury in finding the defendant guilty of

only the lowest of these three grades, namely, manslaughter. I say it will warrant the jury in so concluding. I don't say that it will require the jury to so conclude, even though they believe certain facts to which I am about to refer ; for whether those facts will require a verdict of manslaughter or murder will depend upon the view the jury takes of those particular facts. These facts are developed in the testimony of the prisoner himself, and, of course, in determining whether you believe him or not, you must not lose 10 sight of the immense importance that a favorable presentation of this case had for him. His credibility, of course, is a matter to be determined by you, and to be determined with the consciousness of the vast interest that he has in the result of that determination. According to his evidence it appears that before the 11th day of July, 1895, he believed that his wife had been guilty of adultery with a man named Utter. That on the morning of that day, shortly before the homicide, he saw both his wife and Utter exchanging salutations, 20 as I remember it. He said that he saw his wife waive her hand to Utter, holding out the impression that he believed they were possibly about to continue their adulterous intercourse ; that he then went to his wife, as she walked along the railroad track, and remonstrated with her about her conduct with Utter ; that she at first refused to speak to him, and he then put his hand upon her shoulder and said, "Why don't you talk to me?" and she gave him a shove, and said, "I don't want to talk with you ; I have told you before 30 that I have been with him ; I mean to go with him again whenever I please ;" that thereupon he struck her with a stick, and a struggle ensued between them, in the course of which she attempted to claw his face—using his expression—and she bit him in the hand ; and she went down upon the ground twice ; and the circumstances after that, he says, he has forgotten, but

we know from other testimony that at the close of the scene this mortal stab was given.

Now, if you believe that to be the substantial truth, then I say to you that statement will warrant you in finding this defendant guilty of manslaughter only; but whether you shall find him guilty of that least form of crime will depend upon how you answer these questions with reference to these circumstances.

First, had he, when he sought the interview with
 10 his wife, a purpose to kill her? He says he had not; the State claims that he had; that when, at 4 o'clock in the morning, he borrowed this knife, he then had the purpose to kill her, and that he was lying in wait and searching for an opportunity, and that he joined her upon the railroad track in order to execute his purpose. If you believe that he had such a purpose, then this crime is not manslaughter; it is murder. But if you believe he had no purpose to kill her when he sought that interview with her, then you come to
 20 the next question which you have to answer, and that is: Did he strike the fatal blow in the heat of blood? I don't know that I can define to you better than you understand it yourself, what "the heat of blood" means. It is a sudden, hot flash, to which, owing to the infirmity of our natures, we are all more or less subjected. It is a sudden outburst of passion—"hot blood," as the law defines it. If he did not strike that blow in hot blood, then it is not manslaughter; it is murder. If what occurred did not arouse his passion,
 30 if he was calm and cool, then it is not manslaughter; it is murder. But if you believe the blow was struck in hot blood, then you come to the next question, Was that passion aroused upon reasonable provocation?

He says that there was the belief in his wife's infidelity; that there was her refusal to speak to him; that when she spoke to him there was the declaration

that she had been unfaithful to him, and that she meant to continue in the course of her infidelity ; that thereupon came the blow with the stick, and the struggle, in the course of which she scratched his face and bit his hand ; and that, aroused by all these circumstances, not from any badness of heart, but from an infirmity of our nature, his passion was so aroused that he gave the fatal blow. Now, that is for you to say ; if that provocation was not reasonable, then it was not manslaughter ; it was murder. If you think 10 that, in view of the fact that he said he had long known or believed in this infidelity ; in view of the fact that it was his wife with whom he was contending ; in view of the fact that he had himself, with a stick, struck the first blow ; in view of any other circumstances in the case, you think that provocation was not reasonable, so that his passion was not the result of a common infirmity, but the result of a bad heart, then it is murder, and not manslaughter ; so, that then, gentlemen, you see, to get at this verdict of the lowest 20 grade of crime, you have to take the prisoner's statements as substantially true, and then you have to find that, without a previous purpose to kill, and upon reasonable provocation, in the heat of blood, he struck the fatal blow. If that is your view of the case, then your verdict will be that he is guilty of manslaughter.

If, gentlemen, the circumstances of this case do not lead you to a determination that the defendant's guilt is so low as that of manslaughter, then his guilt is that of murder and it is for you to say whether it is murder 30 of the first degree or murder of the second degree. You will find it to be murder of the second degree unless the circumstances satisfy you that it is murder of the first degree. You will find it to be the lowest grade of murder unless the evidence satisfies you that it belongs to the highest grade of murder. Now, what is necessary to constitute murder in the first degree?

Our statute declares (and that is the law that governs us) that murder committed by lying in wait or by any other kind of willful, deliberate, premeditated killing is murder of the first degree. If you believe in this case, as the State claims, that this prisoner procured that knife that morning with the intention of killing his wife; that he lay in wait that morning, watching for the opportunity to kill her and that he did so meet her and carry out his purpose, then that clearly will be
10 murder of the first degree. You will have the elements clearly pronounced—the lying in wait, the willful, deliberate and premeditated killing. But even if at the time that he entered upon this interview with her he had no purpose to kill her, still it may be that his guilt is that of murder of the first degree; for while the law says that the killing must be willful, deliberate, premeditated, the law does not say that the willfulness or deliberation or premeditation shall have existed for
20 any prescribed length of time, and therefore, all that the Jury need find in order to make it murder of the first degree was that it was willful, deliberate and premeditated though the duration of those states of mind was but short, and if, in this case, after the defendant had struck his wife down with the stick and had got, as the witnesses have testified, astraddle of her body; if then he formed the purpose to finish the work—if then he formed the purpose to take her life and took this knife from his pocket and opened it and gave her a fatal stab in execution of his purpose, that would be
30 murder of the first degree, even though the interval was short; it was long enough to satisfy the law, provided the jury believe that when he gave the fatal blow he had clearly formed in his mind and apprehended to his consciousness the purpose to take her life. Well, how shall you determine what his purpose was? There are one or two suggestions that may be made as helps. The weapon that he used and the portion of

her body upon which he used it; the responses that he made to Edwards and Henderson, according to their evidence immediately upon rising, when Edwards said, "Have you killed her," and he said "Yes, I have killed her," she wasn't dead. Death did not show him that he had killed her and what lead him to answer, "Yes, I have killed her." Was it his consciousness that that was the purpose for which he struck the blow and that he had given the blow in an effective place? Well, these gentlemen, are the questions addressed to ¹⁰ you, to determine, first, whether this crime be that of manslaughter only, if it is, you need go no further in your investigation, but render your verdict accordingly. If it is not, then look carefully to see whether the evidence satisfies you that this crime is brought up to the grade of murder in the first degree. If it does not satisfy you—if you have a reasonable doubt, do not convict him of it. Do not convict him of any grade of crime of which you have a reasonable doubt as to his guilt. The law enjoins that for every doubt for which ²⁰ a Juror can give a reason satisfactory to himself shall be decided in favor of the prisoner, but when your mind is clear of doubt, let no consequences deter you from the clear path of your duty. The consequences, gentlemen, are not upon your shoulders nor upon mine. They do not rest either with Juror or Court; we are not the legislators; but we are the administrators of the law as we find it, and as it is our duty to lay down the law impartially, without fear and without favor, so it is your duty to pass upon the facts. Let ³⁰ your verdict express the honest convictions of your judgment, then you will have done the duty which the law has cast upon you in this momentous case.

The Court of Oyer and Term
in and for the County of Pas
do hereby certify and return
to the Court of Errors and App
that the foregoing is the full
record and proceedings
upon the trial of Daniel Oa
man for the crime with
therein charged

New Jersey Court of Errors
and Appeals.

DANIEL ACKERMAN,

Plaintiff in Error,

vs.

THE STATE OF NEW JERSEY,

Defendant in Error.

Sur Indictment and

Conviction for Murder.

ASSIGNMENTS OF ERROR.

The Court of Oyer and Terminer and General Jail Delivery, in and for the County of Passaic.

NEW JERSEY : } ss.

Afterwards, to wit, on the return of the said writ, before the Justices of our Court of Errors and Appeals, comes the said Daniel Ackerman by Z. M. Ward his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error, in this, to wit:

For that the said Justice before whom the trial of the said indictment was had, and upon said trial, admitted the evidence of George B. Senior, a witness produced on behalf of the State, in rebuttal, and against the objection of counsel for the defendant; viz:

By Mr. Ward:

Q. Was that after a warrant had been made out for him, and he had been committed to the County Jail for murder?

A. Yes, sir.

By the Court: That is your own handwriting?

Witness: Yes, sir.

(case p. 74, lines 20 to 30.)

Second,—There is manifest error in this, to wit, For that the said Justice before whom the trial of said indictment was had, and upon said trial, admitted in evidence, and against the objection of counsel for the defendant, that part of the testimony, given by George B. Senior a witness called by the State in rebuttal; following:

“Q. What had he to say about where he struck his wife, and with what he did it?”

“(Witness reading) He struck her on the head with a stick; she then grabbed me and I grabbed her.”

(case p. 75, lines 20 to 25.)

Third,—There is manifest error in this, to wit: For that the said Justice before whom the trial of said indictment was had, and upon said trial, admitted in evidence that part of the testimony of James Dougherty, a witness produced on behalf of the State in rebuttal, and against the objection of counsel for the defendant, following:

"Q. Tell us what you heard the Justice say to the defendant about the knife, cutting his wife and anything and what the defendant said in response to that?"

(case p. 77, lines 12 to 18.)

Fourth,—There is manifest error in this, to wit, that the said Justice before whom the trial of said indictment was had, and upon said trial, admitted in evidence, against the objection of counsel for the defendant, that part of the testimony given by John B. Goodridge, a witness produced on behalf of the State, in rebuttal, following:

"Q. State what conversation took place about this wife; where the defendant struck his wife?"

(case p. 78, l. 8 to 15)

Fifth,—There is manifest error in this, to wit; that upon the trial of the said indictment, the said Daniel Ackerman was convicted of murder in the first degree, whereas, by the evidence produced upon said trial, no such conviction should have been had.

Sixth,—There is manifest error in this, to wit; That upon the trial of the said indictment the said Daniel Ackerman was convicted of murder in the first degree, whereas by the charge of the Court, no such conviction should have been had.

Seventh,—There is manifest error in this, to wit, That upon the trial of the said indictment, the said Daniel Ackerman was convicted of murder in the first degree, whereas, by the evidence produced upon said

trial, and the charge of the Court, no such conviction should have been had.

Eighth,—There is manifest error in this, That the judgment and sentence of the said Court of Oyer and Terminer and General Jail Delivery was given and passed against the said Daniel Ackerman, whereas no judgment or sentence ought to have been given or passed on the said defendant, below, upon the said record, indictment or proceedings.

Ninth,—There is manifest error in this, to wit; That the Court upon the conviction of the said defendant, on said indictment and proceedings, passed sentence upon the said defendant, to be hanged by the neck until dead.

Tenth,—There is manifest error in this, to wit; That it appears from the whole record in said case, that the said defendant upon the trial below suffered manifest wrong and injury by the rejection and admission of testimony and in the charge of the Court to the jury. That by the evidence adduced at the trial, said defendant should not have been convicted of murder in the first degree, and by reason of such conviction, said defendant suffered great wrong and injury.

For the errors aforesaid, and for errors in the record and proceedings aforesaid, and in the giving of judgment and passing of sentence as aforesaid, said Daniel Ackerman prays that the said judgment and sentence may be reversed and annuled, and altogether held for nothing, and he may be restored to all things which he has lost by occasion thereof.

Z. M. WARD,

Attorney of Plaintiff in Error.

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,

ads.

DANIEL ACKERMAN.

Joinder in Error.

And hereupon comes Eugene Emley, Prosecutor of the Pleas of the State of New Jersey, in and for the County of Passaic aforesaid, and says that there is no error either in the record and proceedings aforesaid or in the giving of judgment aforesaid, and in behalf of the State of New Jersey, he prays here, that the Court here may proceed to examine as well the proceedings aforesaid, as the several causes before assigned for error, and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed, &c.

EUGENE EMLEY,

Prosecutor of the Pleas of the State of New Jersey, for
the County of Passaic,

For Defendant in Error.

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