

14454

No. _____

Supreme Court of Illinois

Hopps

vs.

People

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 74154

PEOPLE'S CAUSES.

Happ

1863

7 Peoples

Hoops

the Peoples

SUPREME COURT.

THIRD GRAND DIVISION.

WILLIAM HOPPS, Appellant,
vs.
THE PEOPLE OF ILLINOIS. } Appeal from Cook Circuit Court.

ABSTRACT OF RECORD.

25 The People called William James, who says, in substance :

26 I was coroner of Cook County, Illinois, in June and July, 1862,
and I was called as coroner on the first day of July, 1862, to hold an
inquest in the town of Wheeling, Cook County, on the body of a
woman, said to be Martha Hopps, wife of the defendant. I impaneled
a jury, held an inquest on the body, and returned the verdict to the
Circuit Court of this County. I found wounds in the abdomen of the
28 body, a little below the ribs; the wounds were said to be inflicted with
a knife, which was produced before the jury; I was at the house, said
to be the defendant's, where the body was. These are the minutes of
the inquest which I returned into Court, and the persons whose names
are subscribed thereto made oath to their respective statements.

The People called Mary Hopps, who says, in substance :

28 That she is a daughter of William Hopps, the defendant; that
Martha Hopps, the deceased, was her mother, and the wife of defend-
29 ant. Defendant killed mother on the last day of June; he came home
from mill about seven in the evening; he had been drinking some; he
called names and scolded my mother, as he always did when he had

31 been drinking. I heard him go into the buttery once before breakfast, and once after; he kept liquor there; that was before he went away from home that day. He had been drinking; I could smell his breath very plainly. He began to swear at mother; called her a God damn bitch, a God damn whore, and so on; mother was washing. Defendant said he had not eaten anything since morning; my sister Martha got him something to eat, but he would not eat, but kept on talking as he had before. She went to empty the washtub, and he tried to prevent her; he got hold of her throat, and she got hold of his; I went and tried to get him away; he let go and commenced talking to me the same as he did to her; I told him he need not talk to me so, I could see deeper than he thought I could; what I said seemed to strike him, and he went into the house; he straightened right up and walked into the house. He came out in a minute, and went up to mother and said, "Martha, I am sorry." She said, "I don't want to hear any of your stories;" then he got angrier than before; she left him and went into the house; he went towards the dining room, turned directly round, came right back up to her and stabbed her; she was standing right before the kitchen stove in the kitchen. She died about six o'clock on the morning of July 1st. I have heard him threaten to kill her before

33 His first commencement of abuse that day was about her being
34 unfaithful to him; that was the burden; he called her a God damn
35 mean whore, and told about her being intimate with mean characters;
he named no one, but called them low people. I next saw him, after
he stabbed mother, sitting in a rocking chair near the dining room
door. I saw him the next morning, lying on the lounge. He said
nothing when mother was dying; he came into the room, patted me
36 on the shoulder, and said, "Never mind."

37 These quarrels commenced about ten years ago. He talked so
38 every time he drank; I never knew him to talk so except when he had
been drinking; he drank every day. for the last four or five years he
would have these quarrels once a week; sometimes oftener, and some-
times two weeks would pass without them; they more generally
39 occurred at night; he would keep them up till ten and half past eleven
o'clock; would go to bed and keep it up nearly all night; I have heard
mother say he would keep it up nearly all night; he never kept it up
40 day and night, but would sleep day times and keep it up three or four
nights in succession.

41 My mother was forty-two years old when she died. She had had
thirteen children; ten living. Father would get drunk sometimes so
that he staggered; three or four years ago he would be so three or four
times in the winter; he did not drink as much in the summer as win-

42 ter ; his drinking has increased for the last three or four years. Father
said he was jealous of Joseph Filkins, Edward Cassel and Peter
Schenck.

43 Mother was a stay-at-home body and hard-working woman ; she
did not visit the neighbors oftener than once or twice a year.

44 Mother left Father four times for treating her so that she could
not live with him. I have seen him beat her a good many times ; once
he pulled her out of bed calling her the names I have given ; he would
turn right after say he was sorry—remain so for two or three minutes and
45 turn right to abusing her again. He tried to persuade her to reform
sometime ago ; but not for a long time. He said he had tried to
reform her. When she went away to her father's he would go after
her and promise to do better.

Father was generally kind to his children ; always kind to the
younger ones. He was affectionate towards his children. He showed
no disposition for female society beside mother. Mother's manners
towards men were such as to never excite a remark ; she never went
about with other men.

48 Some three or four years ago Father swore at me because I had
wrapped a thick shawl around one of the little children. I cried and
told mother ; she spoke to him about it ; he said he was sorry and did
not remember anything about it. I remember his whipping my oldest
49 sister when she was small. He whipped her with a horse-whip. I did
state before the Coroner's inquest that Father was always kind to his
children. Father was a hard-working man ; in the winter did not
work so hard, but in the summer worked right along same as any
50 other laboring man. When Father was sober he never abused mother.

The People called Doctor Francis Mergler, who says in substance,

51 I am a physician and surgeon and live in the town of Wheeling,
in Cook county. I was called to see the wife of the defendent on the
last day of June, 1862. It was in the edge of the evening, and she
52 was very near dying. She had a long wound in the abdomen and she
died in consequence of it.

About four weeks before Mrs. Hopps was stabbed, I was called to
see Hopps ; he was thrown from a wagon and carried to his house ;

he was thrown on the head and shoulder ; he was not seriously hurt, although insensible for a short time.

The people here rested their case.

The Defence called Mary Hopps, who says in substance as follows :

55 Father has ten children living—seven girls and three boys. My eldest sister is twenty-two ; the next one is twenty ; I am eighteen ; the next one is fifteen ; she is very slight and pale and has not been well for two or three years ; she is very timid and does not see strangers ; she is quite nervous ; she has had nervous twitching since mother died and used to start some before. Doctor Mergler told my sister it was symptoms of St. Vitus dance ; that disease has been on her two years this winter.

The Defence called Alonzo Hawks, who testified in substance as follows :

57 I live at Wheeling about a mile and a quarter from Hopps ; have known him fourteen years. I received a note from Hopps about eleven
58 years ago ; it was near Christmas ; I had been to a shooting match ; I then went to Hopps ; I went in obedience to the request of the note.

59 The defendent then offered to give in evidence the contents of the note, which was objected to by Counsel for the People and the evidence excluded. To the decision of the Court in excluding the same the defendent then and there excepted.

60 He had five or six neighbors there and some cudgels ; he read some from the Bible ; said he had been to Chicago and stopped at the Sherman House, and when he went to bed he thought they put him in a room different from what they usually did, rather rougher ; he went to bed and some persons came into the hall ; they rapped at the door ; he said he thought the Masons had come to kill him—that they pulled the bed into the hall and rung a triangle, which was the signal of death ; he heard a female voice, which was Miss Winister ; Miss Winister lives
61 below Wheeling ; he said he thought they went through the ceremony of knocking him down and killing him ; he came home and wrote this note. In the letter he said he had revealed the secrets of Masonry and his life was at stake, and he expected them to come that night and kill

62 him ; he requested me to come armed, and I took a rifle ; I staid there
an hour and a half or two hours, and then took him to my fathers ; he
said he was afraid to go, and I told him I would protect him against all
the Masons that would come that night ; he did not talk much ; said
he wished to get to Chicago. He appeared to me to be very much un-
63 der the influence of liquor ; I thought he had been drinking hard and
had the delerium tremens ; he staggered and stumbled as we walked
over to my fathers. He staid at my fathers all night, and went home
the next day.

65 The defendant then offered to prove by this witness, his general
good moral character in the neighborhood where he had lived ; and
proposed the following question to the witness : " What has been
Hopps' general character, as a man, and in the community as a citizen " ?
which was objected to by counsel for the people. Objection sustained,
and the evidence excluded. To the decision of the Court in excluding
the same, the defendant then and there excepted.

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66 Defendant's wife did leave him. During the time he was abstaining
from drink he appeared like all other men, rational. The night I went
to my fathers with him, about eleven years, I smelt his breath, and
should judge he had been drinking liquor of some kind ; he was a man
who, after drinking a few drinks, was stiller, and after he drinks con-
67 siderable, he talks with almost any one ; I have seen him weekly, and
sometimes daily, and think he drank liquor almost all the time except
68 when his wife was gone, and then I don't think he drank any ; I never
saw him drink any, and never smelt his breath during those times. He
kept liquor in the house ; when I went there he generally brought it on ;
69 he was a man who drank constantly, I think ; he was not generally
70 staggering when I saw him ; he is a man who stands a great deal of
liquor ; when he has been drinking a good deal he is jolly, telling sto-
ries, &c. I never saw him when he could not talk understandingly
about his business.

71 When he is drunk he is not disposed to be quarrelsome to those
around him. I think he drinks more in the winter than any other time.
72 When I first saw him, sixteen years ago, he had liquor on the table ; I
don't think he drank as hard then as of late years ; I first perceived an
increase of his drinking three or four years ago.

The defence called Eva Weidner, who testified in substance as
follows :

73 I know Mr. Hopps ; lived with him two years ago ; he abused his
wife by calling her names, and beating her frequently ; when he was

intoxicated, he beat her, and called her a God damned bitch ; sometimes it was for a day or two days, and once he continued to do so for a week ; I have heard him abuse her until I went to sleep, and when I got up in the night, and sometimes he would be at it when I got up in the morning ; she never quarreled back.

74 When neighbors came in he would stop and treat them politely, and when they were gone he would commence again in a loud voice ; he would follow her about and keep talking to her ; when she went for wood and to the water closet and to other places ; I could tell he had
75 been drinking, for I saw him drink the liquor ; sometimes when he had taken very much he staggered a little ; when the neighbors came in at
76 such times, he spoke friendly enough, and knew what he was talking about, and would act cheerfully as though nothing had happened. He was very kind to all his children, servants and neighbors, except when his eldest daughters would interfere to prevent his abusing his wife, then he would push them back ; he behaved as a man of honesty and kindness to all people. He frequently went to church with his wife and children.

77 When not under the influence of liquor he generally behaved well to his wife ; occasionally found fault and scolded her some ; I think he never charged her with anything wrong when not under the influence of liquor, but I never heard anything to the effect that he suspected her virtue.

The defence called Barbara Weidner, who testified in substance as follows :

78 I know Hopps ; have lived in his house two years ; left there ten years ago ; on one occasion while I was there, Hopps left home in the
79 night, and staid away two days without his wife or I knowing where he went ; he went away at eleven o'clock in the night ; I could not say whether he had been drinking anything the day before or not ; I did not see him drink anything.

The defence called John Ermischer, who testified in substance as follows :

80 I know the defendant ; worked for him five days, about a year ago ; was at his house seven days ; I went there in the evening and inquired for work ; I asked Mrs. Hopps if there was any work there for me ; she said Hopps was in the house ; I went and asked him ; he told

me roughly to go out and milk the cows; I told him I could not milk, and then he told me to feed the hogs. The first night I was there Mr. Hopps was loud in his speech and very noisy all night; I could not understand what he said. The second night, Hopps said, Johnny, sit down here, and I sat up till about two o'clock at night, during all the time Hopps was using language, such as whore, bitch and going to kill her; he was sitting opposite to me, near the table, on a chair; he looked passionate and wild; from time to time he was laughing and smiling; 81 he kept moving his chair to and fro—never sat still; while sitting at the table, he was always murmuring, speaking to himself saying: "That's good eating, that's fine potatoes." &c. The first time I was there, he made these motions (showing them); when he was speaking, he would look at one fixed point, and gaze at his plate; to me he did 82 not look like a sane person; the last day I lived there he looked like any ordinary man; the first day I was there, he kept talking during the whole meal; he made the same motion to every dish he tasted; said that's good, and so on; he did not address any particular person, but muttered and talked to himself.

83 Mr. Stamposki summoned me as a witness; he said I must come to Chicago and give my testimony in the Hopps' case; he asked me what I knew about Hopps, and I told him. In those first two days that I was there, when he was boisterous and noisy, he worked very hard, and I do not think an intoxicated person could work so hard; I could not keep pace with Hopps; he was raking in the harvest field; he had three men at work besides me; they had liquor in the field; I did not 84 see Hopps take any, and am certain he did not; I was binding sheaves; 85 I drank some and the other men drank some; Stamposki did not enquire of me whether Hopps called his wife a bitch and a whore. I did not tell him what I have sworn to here, the first time I saw him; he read 86 the summons to me; I told him I had stayed with Hopps five days, and I knew him; that is all I told him. It may be that I told him what I knew about Hopps; I don't recollect clearly; Hopps does not talk German. I understand enough of English to know what he said. 87 When he told me to milk the cows, I understood him, and replied that 88 I did not know how to milk cows; when he told me to feed the hogs, I went and asked the other servants how to do it. I slept at Hopps' seven nights; Sunday I went home; Monday I returned again, and Hopps was in his regular state of mind.

The defence called James B. Bradwell, who testified in substance as follows:

91 I live in Chicago; am County Judge of Cook County; have been so over a year, now; have known William Hopps ever since he

92 has been in this county; I know his brother, Ralph Hopps. Proceedings were had in my court in reference to Ralph Hopps; the first proceedings were August 4th, 1862; they were had at the instance of Henry Merrill; the second proceedings were had on the 14th day of the same month, as shown by pages 399 and 410 Record R.

93 I presided at the time the case was tried, to which the record refers; it was before a jury, and Ralph Hopps was present.

94 When I first knew Ralph Hopps, twenty-nine or thirty years ago, he was a nice young man, and a competent person to transact business that fell in his way; looked after his own interests, was sociable and took an interest in things going on around him. In 1840, he had an eight horse-power threshing machine, and threshed for my father, and was then as right and bright as any of us. While he still had this machine, there was a change in him, and he lost his reason; he quit his own business—entirely gave it up; could not transact business on his own account; he would work, and probably be as good a workman as any man, if set to work, but his mind was in such a state that he could not do business in any other way.

95 When the country was new it was pretty hard times. We had some potatoes and Ralph and William Hopps used to come over there and roast potatoes. Ralph would talk as well as any body, and was a well-informed man; would buy and sell horses; give and take boot and do business the same as any other man.

96 While he still owned this machine and the horses, he got into such a state that when you would go and speak to him, perhaps he would speak to you and perhaps not; sometimes he would turn round and look at you and laugh, and you would see that he was a changed man; not the same man he was before. Whenever I have seen him since then, he has always been in that state, and since then I have never known him to do any business on his own account; his brother William had to settle his affairs up at that time; of late years, Ralph has changed some; his eye has become more quiet and of an idiotic appearance; I consider it a quieter kind of insanity than it was before. I have not seen him during the last year, except sometime in August last.

98 I have known William Hopps as long and as intimately as I have known Ralph. I have frequently noticed a great peculiarity about William's eyes; it is easier to understand than to describe; at times his eyes would look clear and sparkling, and he would talk brisk and lively, shake hands with you—say something about the Bible or give you good advice; at other times, he would hardly speak or notice you, and

99 you would be struck with his appearance, and feel that all was not
100 right. On these occasions, he was not laboring under the influence of
liquor. He was a man of strict honor and integrity; he was a man
that was very tenacious of his character. It would hurt him wonder-
fully if he thought anything was said that would impeach his charac-
ter for honor and honesty. As a farmer, he was an energetic, hard
working man—making money and improving his farm—built a very
nice house and was regarded as a fore handed man. There is nothing
to compare with his house in that neighborhood. I never saw Mr.
Hopps either turbulent or quarrelsome in company.

102 Defence here read in evidence a deed executed by William Hopps
to Benjamin Luce, as conservator of Ralph Hopps, providing for the
to payment of one thousand dollars by William Hopps to said Conserva-
tor as full settlement of all accounts between said William and Ralph;
108 also providing for the maintenance of said Ralph by William.

109 The petition on which these proceedings were had was sworn to
before me on the 4th day of August, 1862, by Henry Merrill and sets
forth that Ralph Hopps of the town of Wheeling is an insane person
110 and has been so insane for a long time past, and asks that a jury may
be empaneled to inquire into the sanity of said Ralph Hopps. This
petition was drawn by either Mr. Eldridge or Mr. Tourtelotte, Att'ys
of Mr. Merrill; they appeared before the jury and attended to the
111 proceedings. I have known Mr. Merrill a great many years. Some
time before this occurrence, Ralph had left his brother William and
gone to live with Merrill, and there was some feeling on the part of
William Hopps in regard to Merrill.

112 Evidence was heard as to the amount due from William to Ralph;
something was said about William's being conservator for Ralph; an
objection was made that he owed Ralph and his interest would be an-
tagonistic and a continuance was had on the point as to who should be
conservator, and it was at last agreed that Mr. Luce should be con-
servator. Mr. Merrill and Mr. Van Vlack were sworn before the jury,
113 and Ralph Hopps was there and examined by the jury and by Doctor
Blain. I questioned Ralph, and the parties did; we would ask him a
question and he would give you a smile and you could see at once that
he was not right.

William Hopps sent for me after he was in jail and talked with
me, and gave me the whole history of his troubles, and told me what
had caused it. When he had got through telling it, he would go on
and repeat the same thing over three or four times.

He said that in community, reputation, honor and character were above all other considerations; that his wife had done things she ought not to do, and was ruining his character; that he was jealous of her, and that had caused his trouble; he justified his act on that ground, and said it had got to come to that—it could not be otherwise.

He said his wife had allowed men to come to the house. He did not seem to realize that he had done anything wrong. At another time he gave me the names of three or four individuals of whom he was jealous. He said that when he took his little children on his knee and dandled them "dear little bonnies I could not help thinking it was not all right," and he said as I would raise them up it would strike my feelings terribly. He said I have often remonstrated with my wife and told her in bed at night that these things were wrong and she promised from time to time that they should be remedied, but still it would keep going on. He told me he was jealous of Joseph Filkins, Peter Schenck, Edward Cassel, and I think one or two more; one time in particular, Filkins came up when he had a child, and they were drinking health's, and Filkins drank a toast "here's to the man who gets the male children, those who get females are fit for nothing but teazers;" he said it was a terrible thing for a man to come into his house after what had taken place and insult him in that way; it was the most awful thing he had ever known. He said something about the first suspicion he ever had of his wife. He had some difficulty with a neighbor about a horse, and Filkins was one of the arbitrators, or was to be, and fixed it so that the other party beat him; that Filkins had pretended to be a friend and had deserted him, and this he laid to the trouble with his wife; this was the beginning of the trouble. He said how comfortable and how nice they could have got along if his wife had only been true to him; he had gone on and built one of the largest houses in the country and had worked almost night and day; had got up early in the morning and drawn sand and bricks and done all he could to make things comfortable, and it had come to that; what could be done; reputation was above all things; he could not stand it. He would go on and tell about his wife and his being jealous, and if I stopped him he would tell the same thing over four or five times. He felt sure his wife did so; he said there was no question about it. At all times he expressed that deep conviction; nothing that I could say would make him say otherwise.

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He said he loved his wife and that he had spoken to her often and told her how he loved her, and that all he asked of her was to be true to him; that in every other respect she was a good wife and had done well for him. He said he had lain awake night after night and talked to her and quoted passages of scripture relative to her duty, and told

her what an ornament a good and virtuous woman was and that a woman had the keeping of the character entirely of her husband. He said it had got to come to that, and did not seem to realize any sense of guilt or wrong on his part and did not express remorse, and said whatever is right and fair I want done.

He never said what the result would be that I recollect of. When talking on this question of his wife he seemed cool and you would never see a change of his face, but his eyes would sparkle and he would seem to go on in a peculiar kind of way till he had done with the subject; if you changed the subject he would go on in a different way.

120 I am thirty-five; was born in England; came over when an infant. I cannot tell the precise date I became acquainted with Hopps, but think it was the first day he came to Wheeling.

121 From Wheeling we moved to Buffalo Creek, about a mile and a half north of Wheeling; we moved from there the Spring after Harrison was elected, Spring of forty-one I think. The defendant came
122 into that region while we were at Buffalo Creek and I think has been there over twenty years.

123 I might have been ten years old when I first saw Mr. Hopps; I
124 should think William Hopps might then have been twenty-five years of age, probably not thirty. I was not a playmate of theirs; they were hard-working men and did not play with any one. We moved from the vicinity of Wheeling in 1844 to English Grove, seven or eight miles from Hopps' place. There has been very little time that I have not been in that neighborhood more or less; (my father lives there now;) except two years, I was at Memphis. My house is now in Chicago and has been since December, 1854. Mr. Hopps was a client of mine up to my election, although he was a man who had very little law business.
126 Wheeling is about twenty-four miles from Chicago. Since I moved here I don't think I have been at Hopps' house more than once and then I believe he was not at home. I have seen him intoxicated, but not frequently; the first time was at Joseph Filkins barn, at a husking, a good many years ago; about twenty years ago; he was a good deal intoxicated; we had liquor at the husking and he was very noisy and boisterous. I have seen him within a few years when I thought him the worse for liquor; since I have been in Chicago I have seen him twice the worse for liquor; I have also known that he took a little liquor usually, but not of his being drunk very often; the last time I saw him under the influence of liquor was in 1861; I know the time by memory and comparing events; I never heard anything about a big drunk he had a little
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133 before Christmas—the instance I refer to was in my office at Chicago
 during election, I took a glass of ale with him, but he was not in liquor
 then ; I have taken a glass with him a number times, but never but one
 at a time ; I have seen him when I knew he was worse for liquor.
 Soon after he was put in jail he sent for me and I went down to see
 him ; I had been his friend and legal adviser and he sent for me same
 134 as any man would who was in trouble. The jailor came for me to go
 and see him several times and Mr. McNabb came once. I think I did
 135 not advise him about his counsel, but talked with him on that subject
 at one of the interviews. He employed the counsel he wanted himself
 and exercised his own judgment ; we talked the matter over about
 counsel and about different lawyers ; he said he had concluded to select
 one counsel and that one should select other counsel if he needed any ;
 he had got his mind made up on that subject before I saw him the first
 time.

136 He said he had made up his mind to employ Mr. Van Arman, of
 Walker, Van Arman & Dexter ; he said some friends of his had talked
 to him about it ; I am not positive that he told me this at the first inter-
 view ; I told him that I thought Van Arman was a very able lawyer
 137 and good counsel, he said nothing to me about Van Arman's carrying
 him through the Supreme Court half a dozen times ; he told me what
 138 he wanted done was what was right ; I did not tell him that Van Ar-
 man would clear him ; I expressed no opinion on that matter ; he said
 several had advised him to employ Van Arman ; he acted on the ad-
 139 vice of his friends ; he talked with me about employing other counsel,
 and said his friends had advised him to leave that to the counsel he
 had employed ; I think he had made up his mind to have other counsel
 140 before he talked with me about it ; I told him I should select counsel ac-
 cording to my own notion ; he seemed to come back to the plan of em-
 ploying one ; said he did not know much about it, and would leave it
 141 to his friends ; something was said about what counsel would charge ;
 I told him I did not suppose any counsel could really tell how much it
 would cost ; he did not ask me about how much it would cost, nor
 never told me what he had agreed to pay. He is a very good farmer—
 142 as good as there is in the county ; is wealthy, and has as good a home
 as there is in the county ; my impression is that he was poor when he
 143 came there. He is a good deal smarter than Ralph is ; when I first
 knew them they were both hard working intelligent men. I should say
 that William was naturally the smartest man ; a little, but both of them
 were bright men for business, and understood what they were about ;
 of late years there has been a great difference between the two. I will
 not say positively when the change commenced, but think it was in
 Polk's administration ; about that time the change became visible, and
 Ralph Hopps became insane, and has been so since to my knowledge—
 notoriously so with the neighbors ; since then they have been very differ-
 144 ent men. William was a man of good moral character, except that he

145 would take a little liquor and sometimes get drunk. I have heard of his
 146 beating his wife, but don't know whether it was before or after this
 147 thing. A man might be worthy in some respects and not in others. A
 148 man that would get drunk and abuse his wife, so as to drive her from
 home, I would not call a worthy citizen. I have not said that I knew
 of his abusing his wife; I have heard several times that she left him;
 I heard people of fair character say so. If any man touches a
 woman it is not a worthy act. A woman ought to be sacred—there is
 no doubt about that; he might be the best man in the world as to hon-
 esty and other traits, yet that would be a bad quality. I was speaking
 of what I had seen of him for over twenty years—that I had seen noth-
 ing wrong, except that he sometimes took a glass. I am not stating re-
 ports. I was talked with about Ralph by Mr. Merrill and Mr. Tourtel-
 lotte. They got up the petition, without my knowing anything about
 it; I gave no advice as to the propriety of it; Mr. Eldridge said it was
 drawn; it was after Hopps had employed counsel. I consulted with
 none of the lawyers, nor they with me. Mr. McComas came in as to
 the conservator. Mr. Eldridge is gone Lieutenant in Van Arman's
 Regiment. I think it was Mr. Tourtelotte, Mr. Eldridge's partner, who
 first spoke to me.

149 Ralph Hopps did not say whether he wanted an inquisition or not;
 he looked silly and laughed; I don't think he was there when the peti-
 tion was presented; he was when the matter was up before the jury;
 150 it was all done in one day, and the jury returned a verdict that he was
 a distracted person. Merrill did not state to me that he (Ralph) was
 half idiot. I can't remember all the evidence that was given; it is in
 the statute "Idiot, Lunatic or Distracted person;" the petition is signed
 and sworn to by Merrill.

(The Judge explained that by Webster, distraction meant madness
 or state of disordered reason.)

151 I think it was in Polk's administration that he owned that machine;
 he was not raving, but quiet, and when you said anything to him he
 would laugh. When he threshed for father, he was sensible and rea-
 152 sonable; very soon after that his mind became changed. I never heard
 that he had been injured by medicine. I said that at the time I men-
 153 tioned he became a changed man—that he had been getting worse and
 was a duller and quieter man. I cannot state just when he was obliged
 to have some one take charge of his affairs, and do not know much about
 him for the last few years back, but for a number of years after Polk's
 administration, he was not able to do business. I was not at that time
 counsel for either of the Hopps, but have always had most kind feelings
 for both of them.

154 I knew the condition of Ralph, but did not advise the appoint-
155 ment of a conservator before, because I supposed his brother was con-
servator. This conservator told me that this man was crazy; he told
me this in 1855 and 1861. I knew his brother settled up and conducted
his business, and thought he was conservator. His intellect is weaker
156 than some time ago, but he has needed a conservator for the last ten years
or more as much as now. The reason it was done now is simply this,
that for some time previous, Ralph had left William, and gone to live
with Mr. Merrill, who was a particular friend of Ralph, on account of
which a friendly feeling had not existed between Merrill and William
Hopps; and Merrill's object in having a conservator, was to fix Ralph up
and make him comfortable.

157 Mr. McComas appeared, and my impression is, for Mr. Hopps; he
opposed the appointment of Mr. Merrill as conservator.

158 Mr. McComas took no part in the trial of the case; simply repre-
sented William Hopps as to who should be conservator, and said he
did not care who it was, if not an enemy of William Hopps. It was
159 left over to see if some man could not be agreed on by the parties, and
if not, the Court said he would appoint one unknown to either of the
parties. No one connected with William Hopps had anything further
to do with the case.

The defence called W. F. Tourtelotte, who testified in substance
as follows :

160 I live in Chicago, and am an attorney. Sometime after the pris-
oner had been committed to jail, one Mr. Van Vlack came to my office
and said Ralph Hopps was incapable of attending to his own business.
Mr. Merrill, for whom Ralph Hopps had been working sometime, came
with him. After stating the fact of Ralph having some property,
which was in the hands of the prisoner, we advised proceedings be had
before Judge Bradwell for the purpose of getting that property for
him. I was there part of the time; was there when the physician was
examined. Mr. Eldridge was there most of the time and conducted
161 the case. Mr. Luce paid me for what I did about the matter. Mr. Mc-
Comas came to my office, on the subject, but I think that was after
Ralph was declared a lunatic; he came with Mr. Luce to make some
162 statements about some property. This matter came up in the ordinary
course of my business. My partner is Lieutenant Colonel of the 127th
Ill. Regiment, Colonel Van Arman's regiment.

The defence call John C. Haynes, who testified in substance as
follows :

163 I have lived in Chicago twenty-eight years; was formerly Mayor; have known William Hopps about twenty years; have done business with him for many years. I was merchandising, and he bought goods of me. I have bought wheat of him. His appearance always struck me as strange. Sometime last winter, a year ago, he came into the bank of which I am president, I think to draw money on a check. I went up and spoke to him; he looked at me and said, what is your name? Is it so and so? (I don't recollect what name he gave me.) Why, said I, is it possible you don't know me. No, sir, he said, I don't
164 know you. Feeling myself in rather an unpleasant predicament, I walked away into my room, and he went out. I think he looked crazy; his appearance was orderly, but he looked very strange to me. I had known him for twenty years, and was in the habit of meeting him in the street and other places. There was nothing in his appearance which led me to think he was under the influence of liquor. I have had considerable dealings with him; he was a peaceable, honorable, upright man.

165 I have never been at his house, but have met him at Wheeling several times. I have met him oftener when I have not traded with
166 him than when I have. It was sometime last winter when he came to my bank, in the forenoon; he was not there many minutes; I had no
167 account with him; I think if he had been drinking, I should have known it; I do not know his age; I never had heard that he drank to excess.

The defence called Frederick Webber, who testified in substance as follows:

169 I live at Wheeling; saw Hopps on the day Mrs. Hopps was killed; about five o'clock in the afternoon, he was at my shop; he said he had been waiting for me all the afternoon, and had got some screws, and wanted me to go to his house and raise a barn sill; he wanted me to
170 go that afternoon, but as I was not there, said I could come and take breakfast with him, and go up early; he stopped there ten or fifteen minutes, and said, you can do almost any kind of work—fix up churns and chairs; I had done something of that kind that pleased Mrs. Hopps; he said, when I have her down again I will take her to your house; he went down street, got in his wagon and drove home.

171 I was there when Hopps got hurt; I was there before Doctor Mergler got there; Hopps lay on the ground and did not know anythink; his face was very much bruised; when he was at my shop he did not look very pleasant, he talked rough and loud to me.

172 I am a wagon-maker; do jobs for Hopps; have fixed chairs for
him; he had some screws; I used them the next morning.

The defence called John Bryden, who testified as follows :

173 I live in Lake county; am an Englishman; have known Hopps
ever since I came to this country, twenty-one years I believe; In Eng-
land my father's family lived near Mr. Hopps' family; I knew an aunt
of Mr. Hopps; her name was Mary Hoard; I was young and do not
recollect much about her; I have a father living in Bremen County,
Iowa.

175 I was subpoenaed last Sunday by Mr. Stamposki; I learned last
176 Thursday that my father had gone to Iowa; I did not tell Mr. Stam-
poski of that fact; I supposed my father resided in Iowa but did not
know where.

The defence called Clarissa Filkins, who testified in substance
as follows :

178 I was at Hopps' house on the morning of his wife's death, at about
179 ten o'clock; when I went to the house I asked for Mr. Hopps, and they
told me he was in the parlor; I went up stairs to see the young lady
that was ill and met Hopps in the hall; I said good morning; he did
not answer; he did not seem to want to see me; I said Mr. Hopps
what have you done, and I said how can you live? he said I don't wish
to live and walked down stairs; I went down to the dining room and
he was getting his clothes on ready to go away with the officer.

180 After he got dressed I asked him if he would not like to go in and
see his wife; at first he hesitated and said no; then he sat a few min-
utes and said he would go in; we went to the corpse and uncovered
the face and he looked at her and presently threw the sheet on her face
and went out; he said nothing, nor did any one else; when he first
looked at the corpse he looked very fiendish and vindictive; he went
out of the room and sent for his daughter and told her about business
affairs—where he had money owing to him and where he owed, and
asked for an account book to put down some accounts, and said he had
money deposited in the city at Adsit's; his daughter brought the ac-
count book and he said he did not put down the milk for a few days in
consequence of a lame shoulder he had—had it for sometime; he took
181 a pencil and put it down up to that morning; he said he thought he
should have some breakfast before going; the girls got him some and
he sat down and made a hearty meal; he seemed very unconscious of
anything that was going on as regards any feeling; the table where he

ate sat right in front of the door of the room where the corpse lay ;
when he got ready to leave, he took his overcoat and satchel ; his
daughter was in the hall, and was feeling very badly, and would have
fallen if I had not caught hold of her and took her back to the room ;
182 after he got out he came back, silently and slowly, and went right up
to her and kissed her, and walked out without saying a word. That
was the eldest daughter, Mrs. McNab. He got his overcoat from the
closet and went right by the body of his wife.

My husband is dead. We lived two miles from Hopps', from 1836
to 1852. During that time, I never knew that Mrs. Hopps left Mr.
Hopps. She never was at my house ; I have been at her house, but
183 was not a frequent visitor there. She came to my house in this city
once, about six years ago.

The defence called John F. Gilbert, who testified in substance as
follows :

184 I have had some observation of deranged people in my own father's
family, and have lived near a private insane asylum in New York ; was
within a few rods of it, and saw the inmates very often.

185 I was present when the prisoner was put in jail ; had never seen
him before ; he walked through the office with a carpet bag in his hand,
and took a seat in the hall ; I then noticed his eyes being very sharp
and piercing ; his eye, his look, and general manner were peculiar, and
connected with the impression I had of the state of his mind. When
186 I saw him he was with the sheriff. I did not know what he was ar-
rested for. I don't know that I ever saw a man soon after he had com-
mitted murder. I heard no conversation from him.

The defence called Thomas Bradwell, who testified in substance
as follows :

187 I am an Englishman ; have lived in Cook county a little over eight-
een years ; have known Hopps since he came to the country, and for
some seven years lived within two miles of him. Some eight or ten
years ago I put up one night with Hopps at the Sherman House in
Chicago ; being well acquainted, we talked over farming operations.
188 I was telling him how well he got along, and in regard to his wife what
an excellent dairy woman she was, as he could sell their butter and
other products at the Sherman and Tremont houses. I remarked what
a very good woman his wife was. Yes, he said, she is a very good
housekeeper, but a woman should be above suspicion. I could not get
anything more out of him. I did not think Mrs. Hopps was a woman
about whom there was any suspicion. The first time I ever saw Hopps

he was introduced to me by Joseph Filkins; it was in the road; he
 was the wildest looking man I ever saw. I have found him liable to
 sudden changes. His woodland was close to mine; I used to see him
 go there, and he would answer me cheerfully when I spoke to him; on
 his way back I might speak to him and he would give me no answer.
 I would remark it to persons close by; between his going and coming
 there might be an hour, and he would appear quite a different man. I
 knew he was not in liquor; he would come from his house and pass
 190 the tavern without going in. The night I passed with him at the Sher-
 man House, was after I had become well acquainted with him. I am
 191 the father of James B. Bradwell. I think it was from eight to ten
 years ago that I passed the night with Hopps at the Sherman House;
 I think we were there only one night; I do not know what time a year
 192 it was. My business in town was, probably, to sell grain; I am a
 193 farmer. I thought of the occurrence at the Sherman House long be-
 fore Mrs. Hopps was killed. When I heard that Hopps had got jeal-
 ous in his mind, I remembered that I had heard him state that very cir-
 194 cumstance. I think I first recalled it about seven years ago, and one and
 a half' or two years after we had roomed together; we slept in the same
 195 bed; there was no other bed in the room; they were crowded at the
 house at the time; no other person slept in the room. I think I have
 196 known Hopps about twenty-seven years. In going to the woodland,
 after he passed me, he would go about a mile and a half before return-
 ing. I think sometimes he had a man cutting wood there; as he went
 197 along, I passed a few words with him; I don't recollect what. I did
 not go down to his timber land with him; he might have drank down
 198 there, but I presume not. In my twenty years' acquaintance, I had
 seen some strangeness and stupor in him.

The defence called W. W. Drummond, who testified in substance as follows :

198 I became acquainted with the prisoner at the bar in 1855. I was
 then practicing law in this city, with Col. W. H. Davis, now dead; he
 199 introduced me to Mr. Hopps, who came to the office for the purpose of
 consulting with Col. Davis (they both being Englishmen and Free Ma-
 sons) in relation to his wife, who was then at Paw Paw Grove, Lee
 county. They had been separated some time, and he was anxious to get
 her home. After consulting for some time, Col. Davis went out to see
 some other persons—Col. Filkins and Capt. Cassel, I think. While he
 was out, Hopps commenced talking to me about Masons, and requested
 me to attend the next meeting of their Lodge at Wheeling for the pur-
 pose of inducing them not to kill him, and he stated that Mino Winch-
 ell, Col. Filkins, Capt. Cassel and Col. Davis, and some others, were
 combined together for the purpose of killing him. I was very much as-
 200 tonished at the manner of his conversation, and never more surprised

in my life than at the statements he made with reference to these men; that he, a Master Mason, would suppose for a minute, that these men were engaged in any such proceeding.

Mr. Hopps was not under the influence of liquor, I am certain, for more reasons than one. In the first place, he said he had not drank for six or seven weeks, and was very anxious to get his wife back. I or Col. Davis wrote to Mrs. Hopps and asked her to come back. In a little while, he called again, said that she had come back, and they were living very comfortably. Col. Davis was one of the men who was mentioned as conspiring. After Davis returned to the office, I told him what Hopps had said—particularly that part relating to the Masonic Fraternity. Mrs. Hopps, or some of her friends, had applied to Col. Davis to file a bill for a divorce in this Court, or some other. My impression is, that we filed a bill in this Court. The letter to her was written after this conversation, and after filing the bill. I never heard he was expelled from the Lodge. I cannot, for Masonic reasons, state why he said they were about to take violent measures against him; he referred to an ancient simile and type in the Masonic arts, and likened himself to it. I thought it very preposterous that he should do so. This letter is Mr. Davis' hand writing. I have put my initials on it. I never met Mr. Hopps in a Lodge; he was introduced to me by Masons in good standing; under Masonic honor, he would not have been so had it been otherwise. I did attend a Masonic funeral with him.

The defence called John Adams Allen, who says in substance :

I am a physician and surgeon, teacher of medicine in the Rush Street Medical College in the city of Chicago. I have been in Chicago between three and four years. I have been engaged in the practice of medicine since 1845, and collaterally in the teaching of medicine since 1848, in connection with medical colleges.

The subject of insanity comes within the range of my duties as a teacher and practitioner, and is in my branch as a teacher. I have had opportunities for fifteen to eighteen years, in connection with almshouses, of seeing insane persons, and had charge of them in almshouses, prior to the establishment of asylums in Michigan. I am a regular graduate in my profession.

I know the prisoner Hopps. I become acquainted with him since his arrest, and while he has been in jail. I first saw him about three or four weeks since, and have visited him at intervals a number of times, spending each time from one to three hours with him. I have visited him, probably, six to eight times.

Every practitioner of medicine has his own plan of examining a patient. I usually, as in this case, notice the age of a person, by appearance, and also by inquiring.

207 His age I judged to be from 55 to 58. I think he told me 58. The age is of importance, as it indicates a tendency to a particular disease. I found him to be of "nervous" temperament, a predominance of activity of the nervous system, intermingled with what we call bilious temperament, especially striking was the predominance of the nervous temperament. I found his countenance to be very peculiar in its expression; there were certain fixed, rigid lines, and a particular appearance about the angles of the nostrils, as though pain had always been present.

There was a peculiarly sharp expression of his eye, occurring instantaneously and then passing away; the eyes being drawn comparatively from the observer, and then pass as though they looked upon vacancy.

His skin, I noticed, had a dingy and somewhat dirty appearance; not exactly the sallowness which accompanies biliousness, but a sort of dingy, dirty look.

The formation of his ears is peculiar. The ear is flattened upon both sides; the different parts are flattened in a peculiar manner, which would attract attention; through appearances corroborative opinion can be drawn; the projecting part of the ear is flattened down upon the head, which is a fact that would not generally be noticed.

208 I examined his skin by feeling with the hand, and his head, and found the temperature of it to be higher than that of the externals, apparently above that of the trunk. This appearance was corroborated each time of visiting the patient.

I examined next his pulse; it is remarkable, varying constantly from 90 to 120 in a minute; the natural speed of a pulse is from 72 to to 75; his pulse is very weak and feeble.

I examined his heart by placing my ear upon his chest, and found nothing noticeable but its feeble action, corresponding with the condition of his pulse, beating frequently and weakly.

I examined his lungs, because the condition of the pulse sometimes depends upon the formation of tubercles, but they were free from disease.

There was nothing about the abdomen to attract attention. His tongue was red upon the body, with a slight furred surface at the sides. His intestines had very little movement about them; they were torpid and inactive; there was, however, no fulness of the bladder.

209 His skin, at one interview, was dry, with peculiar condition; at other times, it was covered with a sticky moisture, indicating inactivity of circulation. I found no indication in the activity of the abdomen or extremities, although I examined, because the peculiar condition of the pulse rendered it desirable. The object of examining these other parts was to ascertain if there was disease in them.

The prisoner gave me, at my request, a statement of his past bodily health. It was a little difficult to obtain information on this point, as he gave me an account of a sickness, which I supposed to be re-

cent, but which I found had been forty or fifty years ago, which he told me he did not think amounted to anything. He told me at first, that he had never received an injury from a fall or otherwise, and afterwards, that he had been thrown from his wagon upon his head, previously to his arrest. He said it did not affect his head much or his
 210 shoulders, but it made him nervous; the pain in his shoulder and the nervousness connected with it kept him awake a number of nights.

He told me that when he first came to the jail he did not sleep at
 211 all for a number of nights, but that now he was used to it.

For the first fortnight, he said his bowels were constipated—afterwards they became more regular.

In regard to his mental condition,—the facts being intermingled with the conversations had at different times with him—my opinion may be biased by the manner in which he gave the facts. I found it very difficult to get a connected story from him, for when I would ask him if he had been speaking of any recent sickness, he would go on to give some details with all the minutæ; I would then enquire about the time, and find it was a disease that occurred a great many years ago. I would call his attention to something later, and while telling
 212 me about it, he would go off to something else, which seemed to be suggested by his sickness. I could only find out that he had ague and jaundice following, at some time within these few years; since he has lived in the country, he was treated actively for it for some time. He would break off to speak about the doctor, or about some neighbor, and I could not get a connected history for that reason. He would talk for a little distance with great particularity with regard to some disease, and then would go off and talk with as much detail on something else which had come up. When I asked about the falling from the wagon and the injuries then received, he gave me an account of it, and then went on to tell about the wagon, the wood it was built of, its hubs, and the history of its maker. I could not get definitely from him the details of the transaction. I saw that it was a sort of tangential action of the faculties going off into episode. He was perfectly orderly in his manner, when he commenced, until he went to something else, and then he was orderly in this; giving all the details, with a degree of attention and apparent candor, which would strike any one. He would go through with his subject until something came up, which would call his attention, and then he would go
 213 off upon that. It is difficult to describe the manner in which these suggestions would lead to others. He would generally talk quite rapidly, when he started on any point.

His manner was peculiar; he generally came up from the jail to a room above, where there was an iron bedstead, upon which he would sit bolt upright, without moving for three hours; with a quick, sharp glance his eye would look up, and then again resolve itself into vacancy. He would go off tangentially, and treat upon a second subject, speaking with very great earnestness and candor, as though he wanted

to impress the truth of what he said. I would perhaps make some discrepancy in my statement, and he would check me in an instant, and tell me it was not so.

214 He told me that in his social relations he had always been pleasant and peaceful, until the time of a lawsuit he had a good many years ago, or trouble with a man about a horse; he hired a horse of a man, and while he had it still in his keeping, it died of the "botts," that the owner wished to have him pay for the horse; some questions arising, they left it to arbitrators, who decided that Mr. Hopps was not responsible. Mr. Merrill thereupon brought the matter to Chicago and employed Mr. Arnold to prosecute it, as Mr. Merrill said at the advice of his neighbors,—and he named Filkins, Cassell and Schenck—Filkins and Cassel certainly. Somehow, it was taken out of Court, and left again to arbitration, and, I think, he said, Filkins was one of the arbitrators. The arbitrators decided that Mr. Hopps should pay thirty-seven and a half dollars, and Mr. Merrill should lose a like sum. He said that the neighbors had entered into a conspiracy to ruin him. I asked him how that could be; he told me that Mr. Filkins was one of the arbitrators, or had advised

215 that he should pay thirty-seven dollars, which he thought was wrong. I asked him what that had to do with the matter; he said it had everything to do with it, they made a combination against him, and put up these men, Schenck and Cassell, both of whom were loose characters, to seduce his wife, and be revenged on him. The reason Filkins could not do it was because he was a Mason, and could not do anything wrong to his family himself. He said it was very certain it was done, because after a child (a boy) was born, he invited Filkins to go and drink with him, and Filkins gave this toast: "Here is to the man that can get boys, the rest are only teasers." "I looked at him, and I knew then that he thought that I could not get boys." I asked Hopps, if he had any further reason for suspecting; he said he had. On one occasion he was down in the city to sell some veal; he was walking along with Filkins, and Filkins said: "Well, these women are pretty good things after all," and he said, "I could not help thinking what in hell that has to do with veal," and that Filkins

216 would not have made such remarks if he had not the subject upon his mind. I asked him if he had any other reason, and he said he had; he came home one day while Mr. Schenck was there, who came to get some onions; he was to have half a dollar's worth of onions, and Mr. Hopps was heaping up the measure, and Schenck said, "Oh, no! there's enough, there's enough," and he could not understand why Mr. Schenck was so good natured; and he found that Mr. Schenck had been there to see if Mrs. Hopps could sell him any onions, and Mrs. Hopps did not like to sell them without Mr. Hopps being present, so he came back next day. After the child was born, Schenck came there one day when he was butchering hogs, and either Mr. Hopps brought out the baby, or some one did, and he said to Schenck,

217 "Here's the little onion boy;" and "I watched Schenck's face, and I knew that my suspicions were true." I said, what did you know was true, and he said, "That Schenck had connection with my wife the day before he came for the onions." I don't recollect any other reasons or facts upon which he based his opinion. These cases—the horse case, the onions, the toast, the veal, and the hog case—I remember no other, were expressly given as reasons for believing in the infidelity of his wife.

218 He said his wife was the best wife and mother in the world till, as he expressed it, she went bad. He said he loved his wife, and at that time she loved him, that his affection would be just as it used to be in the old time, and then she would go bad again. I ought to mention, that I asked him about his younger children, whether he had any bad feeling against them, and he said, "No, the poor little bonnies were not to blame for it in any way, he loved them as well as he did the rest of his children." He said he had not used any diligence in watching his wife; he thought that would be very dishonorable to be watching and sneaking about. He said he tried to reform his wife, by talking and reading the Bible to her. I asked him if he had ever sworn at her, and he said he had, but it was as God Almighty would curse wicked things, it was for her good. He told me he had built that house so fine and large to please her; that he himself did not care anything about it. I think he said she wanted the house in order to give more attraction for herself, she had told him so. He said that Filkins, Schenck and Cassell had always been friendly and intimate with him till this trouble, and since then they had not been. I think he said he had never intimated his suspicions to them in any way. There is one thing still further in proof of this suspicion of his wife; once he brought her down to the city, and bought her some things; he stopped at a hotel, I think the Metropolitan, and when he came in he found her crying, and asked what she was crying for, and she said if it had not been for that Filkins and Merrill difficulty, we never should have had any trouble; and that, he used as an additional argument to prove her infidelity.

219 The Filkins' and Merrill difficulty, he said, was the horse case. These things he communicated to me disjointly, as far as subjects were concerned; not as to sentences, which were always coherent. In speaking of his wife's virtue, he said that she was one of the best wives and mothers in the world, they loved each other as faithfully as any persons in the world ever did, but that at the time of that difficulty his wife took sides against him; and at the same time he brought up this matter about the Masons, in connection with Filkins taking sides against him, which all resulted out of this horse case. Filkins and Merrill were Masons, and were stronger in the lodge than he was; they had conspired against him and had got this man Schenck, who was not a Mason, to seduce his wife, and were determined to be revenged upon him for not paying Merrill seventy-five dollars.

220 He is a man who has considerable refinement of manner, and deports himself with a great deal of courteousness and dignity, talking very quietly; and as I have said, impressed me with his earnestness in all these little things, he spoke of, as being of life and death to himself. I asked him what his feeling was as to this trial, he said all that he wanted was simply to have justice; that he expected when this trial took place he had only to come in and state his case, and he should be acquitted. At the same time he said this with great appearance of candor, and as though there could be no doubt in the mind of other persons more than in his own. He never showed signs of regret at what he had done; it was necessary to be done; he had done justice, and all he now asked was that justice should

221 be done to him. He spoke of his children with the greatest affection. I asked if they were still affectionate towards him. He said, yes, but that it made the poor creatures feel so bad when they came to see him, that they did not come often. I can't recollect what he said in reference to his sensibility, or the mortification he would feel if he were considered guilty. It is possible that there were a great variety of things which he said, in this jumbling episodic manner which I cannot recollect.

It is well understood that it is difficult to define Insanity, or disease of any kind. Insanity is such a disease of the brain and nervous system, as incapacitates them for the proper manifestations and operations of the mind; it is a disease of the organ through which the mind manifests itself, that organ is the Brain, and, the Nervous System with its prolongations; the nervous and spinal cords extend from

222 and are subsidiary organs to the brain. I might perhaps confine the disease to the brain, being understood, that the spinal cords and other nerves are subsidiary to the brain—the brain being the centre of the nervous system. The function of the brain, is to manifest the mind. A disease of the brain is studied by noticing the changes which affect the organs, which act with the brain.

223 To ascertain the causes of the various phenomena, and trace them to their original source, is the object of every examination into the state of a disease. We have to understand the connection of parts, or Physiology. In studying the condition of the brain, we study the symptoms which are indicative of change, in the operation of the brain. So in this case, I proceeded to investigate the cause of certain peculiarities, which, professionally, I understood as a symptom of a diseased condition of the mind, or rather of the organ through which the mind is manifested. I undertook to account for the peculiarities by observing all the symptoms I have mentioned, the condition of the patient, his age, his temperament, condition of ears, eyes, secretion of nose, condition of pulse, heart, lungs and abdomen.

On observing these symptoms through all these sources, I am driven professionally to say that there is a disease of the brain.

224 All the physical symptoms that I know of were present in this case. I do not find any one adverse to derangement, they are all evidence of derangement taken together. I have made up my mind, that he has disease of the brain to such an extent as to interfere with the ordinary manifestations of mind, this we commonly denominate Insanity. As there may be degrees of severity in disease in the other organs of the body, so there may be in the brain itself.

225 In every case, and I have been frequently called upon to examine, I always commence with a doubt, I confess, so that I endeavor to have my mind free from any bias, and then aim by careful examination to arrive at the opinion, which I ultimately give; I have endeavored in this case to adhere to this custom, and to examine the facts, and the bearing of each one, and I came to the conclusion, not immediately, but positively at the end. I did not make up my opinion beyond a doubt at the first investigation; for instance, I would be very loth to make up my mind of the condition of the pulse at the first examination, but would examine it from time to time, and when I have observed that in connection with the other facts, then the conviction becomes profound and beyond escape. The symptoms I have stated indicated a chronic disease; acute diseases are manifested by much greater activity of all the symptoms. I have heard the evidence given in the case. My opinion is, that the facts being assumed to be true as stated, that the man has chronic insanity which has continued for a number of years, ranging in its degree of manifestation at times, as is true of all chronic diseases of the brain or any other organ. He told me, in speaking of the treatment of his disease, that he had taken mercury in large quantities for the purpose of salivating the glands, and without any effect.

226 There are very many diseases which are hereditary in their tendency, insanity is strikingly one of them. The fact that there has been insanity in the circle of immediate blood relations of the patient, is of the highest importance, in forming an opinion of the nature of the disease. In my opinion, the presence of Insanity in a brother is a much more important fact than the presence in the father, for this reason; the organization of the father and mother usually give rise to particular tendencies to disease on the part of children, these are much more likely to be alike in brothers and sisters, than in the father or brother, or mother and brother, for the reason that the two organizations are represented in the family; this is a common philosophical fact, and illustrated in stock breeding. The presence of Insanity in blood relations, especially brothers and sisters, is an important fact, because the concurrent causes meet in the children.

228 Diseases affecting the nervous system have different manifestations. A conformation, which in the father would result in paralysis, in the son might result in insanity; and where there is an affection of the nervous centre the manifestation of disease in the child might affect the brain, so as to produce insanity.

229 I have explained my idea that the organization of the child is varied by intermixture with the blood of the mother; the manifestation might be changed in its form, and still appear in the third and fourth generation, so as to show the peculiar kind of nervous disorder, which had existed before; what we call hereditary depends upon organization. The question of simulating or counterfeiting insanity, was a point in my investigation. I took great pains in the examination, and from my experience and reading, I would say it was a kind of insanity no man could simulate. This class of insanity cannot be simulated, and I saw no attempt in this case. A man who simulates insanity always uses incoherency, pays no attention to your questions, but goes off into rhapsody, but in this case there is no incoherency of words and sentences are formed perfectly.

230 There is no incoherency as to the subjects, which are suggested by what he is speaking of; no simulation in this can be possible.

I may say that I don't base my opinion merely upon these mental manifestations, I undertake to give them only the importance to which they are entitled; taking them with the other symptoms, the case became clear to my mind, and all doubt was removed as to the action of the mind.

It is characteristic of insanity that the manifestations of the mind are changed by the diseased brain. In this case from my observation of the man, the working of his mind as connected with his physical condition, was clearly observable. I became of the opinion that he had want of control over certain portions of his mind; that there was present what was technically denominated a delusion—a peculiar emotional influence developed to such an extent that it controls the rest of the operations of the mind. As far as this particular delusion is concerned, there seemed to be an entire revolution of the ordinary condition of the ideas of right and wrong.

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234 In the power of reasoning from cause to effect, so as to see the validity of a reason, he was almost totally incapacitated.

The ordinary effect of the symptoms, which I detect in the prisoner, upon the judgment, in regard to subjects upon which the derangement exists is to weaken the power of mind or to pass it out from under the control of the volition or will.

235 The length of time of the growth of insanity depends upon the cause of the difficulty. When hereditary, the derangement may manifest itself slowly, gradually, and taking years, and when it is produced by slow changes in the structure of the brain, and from other causes, it may be a long period in attracting attention.

When it is noticed, it frequently happens that circumstances, that transpired previously, have had to do with it. Sometimes a cause may be such as to produce insanity immediately, as for instance a blow upon the head, or at other times, it might not develop until after a number of years; it depends upon the cause and its surroundings; a man may have it, yet if there are no exciting causes or surround-

ings it may not develop itself. So again, hereditary insanity may not develop itself until a particular age, for instance, the age when his
 236 father had the same malady; perhaps it may be slowly developed, passing through, ten, fifteen or twenty years, and come on gradually. As a general rule, the patients are characterized by sleeplessness during the presence of partial or general insanity. A simulator would be compelled sometimes to sleep; a truly insane man, even though of only partial insanity, will go night after night without sleeping. This sleeplessness is a very important point in determining insanity of any grade. There is some difference of opinion, but I believe the usual rule is, that a person with a disturbed state of mind is
 237 rendered more excited, and the disturbance is more strikingly manifested at night. I have observed that in Insane Asylums patients quiet during the day at night rave. I am unable to answer definitely how long any ordinary man under the influence of spirits can continue under violent and excited agitation, talking continually and excitedly, without sleep, the rule being that the patient speedily falls under one form of insanity called "delirium tremens."

I could not answer definitely how long a sane, sober man could continue in violent action upon a single subject without repose for a moment of time. It would depend upon the man's strength and power,
 238 but still a man would be likely to be exhausted in a few hours. It is characteristic of one particular manifestation of insanity to burst into sudden and violent passion upon slight provocation. The general powers of the prisoner's mind are affected by this disease, power of reason, power of judgment, power of choice, general subjects more or less. Loss of power is manifested through the brain; I would like to be understood professionally in one statement, when I say loss of power in a particular faculty, I mean loss of power of will over its manifestations. This loss of power is general in this case, not that
 239 there is a want of power of action—there may be increased action,—but a loss of power or management over it by the mind. A phase of hilarity rapidly followed without apparent cause by extreme gloom, abstraction and melancholy, is a symptom by which we arrive at the condition of a certain portion of the brain, which we call the emotional centre. With regard to the prisoner, I would simply say this man has a diseased condition of certain portions of the brain which renders the mind incapable of manifesting itself through the brain;
 240 I should call his type of insanity, a disease of the emotional centre, producing such a condition of the organ as a whole as to prevent orderly manifestations of mind under which term I include both will, understanding and consciousness. It would, perhaps, ordinarily be called "monomania," but I object to the term professionally, and I believe it is not now used by the best writers. I think there is no such thing as frenzy or raving madness without delusion, I do not professionally admit the definition of illusion and delusion being the same. In frenzy
 241 there is a general want of control over the operations of the mind by the

will, there is no such thing as connected thought, no coherency, no fixedness of mind in any particular channel. In the case of persons suffering from fever or other diseases, there is an entire want of coherency in the different phrases used, and a want of orderly action.

242 A man may be, when left to himself incoherent, but when his attention is called and fixed upon some point, the appearance of delusion will pass away entirely for a few moments and then when the persons attention is not fixed, his delusion will come again, and he will go off into incoherency. The conduct of raving madmen towards other persons varies; I have seen a man raving and yet under the control of some person. There may be raving maniacs, without any disposition to violence, manifesting it entirely by language; the muscular action of the body being but one mode of the manifestation of the persons mind.

243 I first had notice, and went to see this case three weeks ago, at Mr. Dexter's request; he spoke to me in the morning for an appointment in the afternoon. He said the prisoner was supposed to be insane, and he wanted to ascertain the fact; he had not himself seen him. He told me it was Hopps, who had murdered his wife, as I might have seen by the newspapers. He said nothing about Hopps' brothers for a week or
244 ten days after. My first examination was three week ago; my last the day before the trial. The first visit, Mr. Dexter and Mr. McComas went with me; I was introduced as Dr. Allen, a friend of theirs; there was nothing said that I came to examin him; the gentlemen called me doctor; he did not address any conversation to me as I preferred he should not; subsequently he addressed me as doctor.

245 It is a correct proposition, that different types of hereditary insanity may appear among brothers and sisters, or rather, that one type of insanity might appear in the father, another type in the son, another in the grandson.

It is not true that a parent with gout would transmit the scrofula, but it is true that a disease may appear in the parent, and an analogous disease in the children. The father has gout, it may give scrofula to the son, or chronic disease, or affection of the brain. The one hereditary
246 fact is the disease; one member may have a highly excitable organization, the other a sort of dementia; organizations will shade into each other. In inflammation both the immense activity and the diminished are the same condition.

247 I stated that the difficulty of the prisoner was a disease of the emotional centre, which affected the central organ of the brain, thus destroying the power of will. The emotional centre is situated in the base of the brain, in that portion of the brain extending from the upper part of the spinal cord to the cerebrum. The whole brain, in
248 this case, is affected, some parts in a greater, others in a less degree. The brain is composed of separate organs; one may be affected and the others not. Monomania is too indefinite; it has been a general, convenient term, but is not scientific. At times, in this case, the whole brain is affected, the local disease affects other portions of the

mind and impairs their manifestations ; like an organ with two or three notes out of tune, which are not noticed till these keys are struck, although they affect all the other keys in their vibrations ; so the influence of the afflicted part affects the others. Insanity is a disease of the physical structure through which the mind manifests itself.

There is blindness by the structure of the eye being impaired, and the want of perception is due to the structure of the eye, not to the light. So in insanity ; it is not that the mind is diseased, but the structure through which it operates.

There have been people insane and on a post mortem examination no disease of the brain has been found. The real change which takes place in the material body is invisible to any sense, it is of the molecules or atoms of matter. No act can take place without destruction of the material of the body, and where there is a change in the action of the body there is change in the material of which the body is composed, thus we can pass from scarcely observable and not observable changes shading deeper and darker, until we get the products in mortification and death.

Our knowledge depends upon induction, it is not sufficient merely to find facts, we must endeavor to find an essential relation between the effects, which observed closely give scientific and established laws. Invisible molecules in the brain can make a man insane, just as an invisible molecule in the liver will disturb that organ and destroy life.

I said the patient had a weak pulse ; I recollect two cases in which I examined the pulse of individuals of highly nervous temperament, who had committed the act which this man committed, and were approaching the time of trial. It is not natural, that the pulse of a highly nervous man, accustomed to the use of ardent spirits, and placed as this man is, should run to a high degree, without other circumstances. I found that while daily his general health improved very much, yet this rapid pulse continued. His ear was flattened, that is an indication of insanity ; this fact alone might pass unnoticed, except in relation to other things, but is an item to be looked at in judging of temperament. The rapid action of the heart involves a weak and rapid pulse, or the heart and the emotional centre are immediately connected through the nervous system. From the base of the brain, under this emotional centre, and in immediate connection with it, are nerves which pass downwards, being connected with the organs of the chest and abdomen, and connecting with another series of nervous cords about the chest and abdomen, which we call "plexuses." The connection of the brain and heart is through these nervous plexuses. It is a common thing for great alarm and anxiety to quicken the pulse. I consider the defendant to be laboring under local disease of the brain, producing disturbance of the emotional action or manifestation of the mind ; commonly called, he has mono-mania, "madness on one subject."

258 I never at any time thought the defendant had an appreciation that
he was liable to the penalty of murder, both from his repeated assertions,
and his manner which was convincing in its earnestness, that all he
259 wanted was to state his case and the court would justify him; at the
same time he seemed aware that he was going to have a trial and for
what, but was convinced of his acquittal. If he had stated his regret
for the deed in the same earnest manner I should say he had the con-
sciousness of what he had done. I base my conclusions on the facts I
saw myself.

This disease of the emotional centre would deprive him of the
power of will and choice to control his moral actions, not wholly, nor
at all times, since that would depend on the degree or extent of the
260 disease; it would deprive him of it on certain subjects. That the dis-
ease is not extensive is evidenced by the fact that in very many
particulars he manifests control over his will; the disease is in this cen-
tre, it does not extend to such an extent as to involve the faculties of
the mind in complete overthrow. When under the influence of this
particular subject, I should say he was entirely incompetent to make a
proper mental volition and act of will; his competency would vary
261 upon the extent and degree of his excitement. It is strong evidence
of a delusion to my mind, and not necessarily an exercise of simple will,
that when raging upon this subject, the patient on the appearance of a
neighbor whom he respected, should become calm, it would not indicate
that he possessed the power to control his will and acts, and to judge
between right and wrong.

262 I was not present at the examination of Ralph; I knew nothing
about Ralph until ten days after I examined his brother. I was in
Chicago the fourth of September. The effect of mental aberration is
sometimes to increase the memory, so far as the facts and events of a
certain period of time are concerned, sometimes to weaken or disturb
263 its accuracy. Memory may be present, and yet the man be not respon-
sible for his acts; without memory he could not be responsible. The
fact that prisoner came to this country poor, and by energy, skill, and
business habits had acquired wealth, and had been a good business
264 man until this act, would not shake my opinion, still, if he had these
business habits I should infer his faculties were affected to a small
degree. I gave no notice to the District Attorney, when I went to ex-
amine Hopps; the first time I examined Hopps in the Hall below,
afterwards in an upper room by ourselves; there were present at these
265 interviews the counsel and Doctor Rae, Professor of Anatomy in the
Rush Medical College, and a Practitioner of Medicine in Chicago, and
Dr. McFarlane, these latter I supposed to be there at defendant's re-
quest, as they seemed anxious to give him a perfect examination. I
never met the other Doctors but in the jail, till we came to this room.
266 The defendant seemed to have a great regard for his honor, pride and
self-esteem, but not in an offensive sense.

267 The different manifestations of the mind take place through particu-
lar parts of the brain. When these parts are diseased, the manifestation
of that particular faculty is disordered or diseased. An insane person may
have a knowledge of right and wrong and yet want a power of choice.
Having knowledge of the particular act he is doing, and being only a
mono-maniac, there are numerous cases when he can control himself;
he may know that what he is doing is wrong and can't help doing it.
268 What particular faculty is involved in local disease of the brain, is a
question for observation; this is true of both mental and moral mania,
as regard their mechanism in the brain, the distinction between them
is an aesthetical one; the mind is something outside which operates
upon and through the brain, the spiritual part cannot be diseased.

269 The cases are very rare where actual change of structure cannot be
detected after death, and more rare now than formerly, because obser-
vation is now careful and minute. We find after death alterations
which previously would have been entirely overlooked. The brain is
affected by the same simple physiological law of molecules, as muscle
or gland. The books are full of cases, and every man's experience
confirms the fact, that persons labouring under a delusion of a sensitive
nature will conceal and deny their delusion in the presence of unsym-
270 pathetic persons,—will even laugh and jest about it.

271 I made up my mind of the prisoner's state from observation, be-
fore I came into Court, and have heard no testimony to alter my views.
The dominant influence of his mind would give way to another emo-
tion on the introduction of a neighbour. Lunatics, even raving ma-
niacs, when you come up to them, will be quiet and come up to you.
After the intervention of a subject has been removed, the mind will
commonly go back, as it does in fever, to the old channel.

273 The very presence of delusion necessitates aberration, want of
274 power for understanding, comparing, and observing between right and
wrong. A delusion or false notion affecting a man's motives or life,
would go far to impair or overthrow the control upon the understand-
ing as to the difference between right and wrong, and the power of choice
between them. He did not say or do anything to make me suppose a
275 disease he spoke of was of recent occurrence, but when I, thinking it
recent, asked him, he told me promptly, it was when he was a boy
eight or ten years old. I have been examining physician for Insurance
Companies for a number of years; we examine all parts of the body to
discover latent disease; the average pulse of healthy adults is from
seventy-two to seventy-five; a variation from this would induce us to
look for disease. Insurance Companies are very particular upon this
276 point. In a healthy person, under sixty, if the pulse goes up to ninety,
and continues so daily, under circumstances of quiet or excitement,
we consider it indicative of disease; if excited merely by the emotional
powers it would speedily decline.

The defence called Dr. Henry Wing, who said in substance :

- 277 I reside in this city; have been a physician for sixteen years; am now a lecturer and teacher of medicine, and a member of the State Board of Medical Examiners of surgeons for the army. The philosophy of the brain and nervous system are subjects of general practice in my profession. It is the universal belief that "monomania" and partial insanity exist; that insanity is always a disease of the brain, which is then changed in some of its conditions.
- 278 I have twice examined the prisoner. I saw him first November 25th in jail. I staid with him an hour and half, investigating his state of health and examining him. I saw him again last Saturday week, in the same place and under the same circumstances. In my first visit, I confined my physiological examination chiefly to the pulse, which I counted half a dozen times at various intervals, to find whether it was uniform, and to learn what its character was under different mental emotions, as we conversed on different topics. It was uniformly irregular, the average varying from 108 to 120. I found great difficulty in getting his mind to flow in the channels, which I desired. I made no inquiry, but judged him to be between 55 and 60 years. His skin was thin, with an unnatural cadaverous appearance and unhealthy moisture. At the first interview I found the pulse indicated material lesion of some organ, and at the second visit I proceeded to find what that organ was. The abdomen, though large, had no special disease, nor the lungs; the heart had a feeble action, but no evidence of special alteration of structure, I judge its muscular action to be feeble. In a state of health there is a natural relation between pulsation and respiration, there is an average of four to four and a half pulsations to one respiration; the prisoner had six to one, which I considered abnormal, that is, it showed the existence of some vital disease.
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- 281 The odor of the skin verifies the diagnosis of disease of the brain. I first observed the bearing and personal appearance of Hopps when I think he was not conscious anyone saw him. I entered into conversation with him to find out his character, the bent of his mind, his early influences. He told me that his mother was a Methodist and that his father was converted by Wesley, in England, and had a Bible which was presented to his grandfather by Wesley. I got the impression that his mother outlived his father and was affectionate to him. He seemed to have pride in their memory. He said he belonged to no church, but would help all. This narrative was intermingled with a history of his personal wealth; it was difficult to confine him to one topic, as suggestions would lead him off the subject before it was finished. I asked him if he had had disease of the liver, seeing his abdomen so large, he said he had in Vermont, and told of his treatment, which led to his experience in the woods, and ran on to chopping. I had to renew my conversation to get it
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complete. He said he was salivated at that time, but was always able to do a large amount of business; he thought he had some nervous affection of the mind, which first occurred in Canada, that he employed a good many agents there and lost a good many night's sleep, and that these nervous spells had troubled him since; I could not understand his descriptions of these spells. Talking of his history, he said he had never had but one trouble and that related to his wife, and was connected with a horse difficulty with one of his neighbors; his narrative was confused and I had to ask a great many questions; his neighbours wronged him and conspired together against the virtue of his wife.

285 He said one of the arbitrators, who had desired he should pay half the value of the horse, had maliciously told him he should not pay anything, and that he could not have so changed his mind without being party to some conspiracy, and he was satisfied it related to the virtue of his wife. As an additional reason, he said his wife had confessed her guilt; once when he came to Chicago to sell some wheat he left her and found her afterwards in tears, and she said, "if it had not been for that Filkins' difficulty, we should never have been in trouble." I asked him whether she admitted it in any other terms; he said "oh! no, not at all." He said his wife would sometimes become alienated from him.

286 He spoke of her general character with a good deal of pride, that she was of unusual virtue and abhorred wrong. He said he did not know what arts this man had used to alienate his wife. He mentioned a toast offered by Filkins; and he said that his interpretation of it, referring to her infidelity, his wife confessed was true. After the birth of a boy, in which he had some pride, Filkins and he were together, and he said "it's my toast," and Filkins said "the men who get boys are the men, the rest are teasers." He spoke of this to his wife and she said, "oh, he didn't mean that, he meant the other way."

He was once selling veal with Filkins, when Filkins said, "these women are nice things after all," and he said he knew by that, that Filkins had had connection with his wife and it was full proof of her infidelity.

287 The action of his mind in conversation is clearly insane. Towards his children, he seemed to be a man of kindly feelings. About the killing of his wife he said that he knew it, and that he had done right, even if they hung him; that was what he wanted to do, and he should do so now. He said that after the killing of his wife, he slept on the lounge that night, that next day he went to see his wife, who was still living, and that he had no feeling of revenge.

In his character there was a marked tenderness and disinclination to violence, and a want of recognition, that in killing his wife he had committed any act of violence; and I could feel that while he said this, 288 his pulse was not affected. The logical part of his mind was totally inadequate. I thought he seemed to feel a sort of elevated consciousness of rectitude, when I saw him walking across the hall. I have no doubt he is insane; it is a case of slowly developed hereditary insanity; his

289 form of insanity is seldom met with but when hereditary, and the im-
 portant question then is, the history of the family, as there is a kind of
 hereditary certainty in disease. I have heard part of the testimony;
 if I found insanity in the blood relations it would have a strong im-
 pression to form my opinion. His is a case of slowly developed
 insanity,—the past four months cannot have made any great change
 290 for better or worse. His removal from all the excitements of life
 would perhaps be favorable to his improvement. His temperament is a
 nervous, bilious temperament. It would be impossible for a man of
 his knowledge to simulate this malady; he seems to be perfectly frank
 and honest. When a man desires to simulate insanity the predominant
 feeling is a desire that others shall regard him as insane, he therefore
 puts on the manifestation of insanity, to those he is acquainted with; men
 who have not studied insanity would not regard his type as insanity.
 The common symptoms of "monomania" are, that it first manifests
 291 itself as a peculiarity of character, the patient is called singular, he
 has periods of excitement, when he does not sleep and when he is gen-
 erally insane, which is followed by a want of repose till the excitement
 wears off. It is a general rule that the antipathies of the disease are
 against those to whom they are most attached. Whenever a disease
 exists, any violence suffered by the constitution in proximity to the
 diseased part, either induces a new disease, or generally increases the
 existing one; a blow on the head would magnify a disorder of the
 292 brain. There are two periods of life in families, in which disorders of
 the nervous system would be likely to manifest themselves, one from
 fourteen to eighteen,—the other forty to forty-nine.

Only Mr. Dexter and Mr. McComas went with me the first time to
 the jail. Mr. McComas and Dr. N. S. Davis, Professor in the Lind
 University, went with me the next time. Mr. Dexter asked me to go
 293 the first time to see the prisoner, about whose sanity there was a ques-
 tion. I don't know when he was put into jail; I asked him about his
 health since he had been in jail. I do not think a farmer accustomed
 to out-door exercise, when put in a cell alone, would, on that account,
 294 exhibit the symptoms he does. Four months confinement would pro-
 duce changes in the skin, but not such as I see in the prisoner. Con-
 finement in jail and changes of diet might produce a very great change.
 I was not told before the examination that there was insanity in the
 295 family. I assume that he has a brother insane, which I consider an
 important fact. Mr. McComas told me this, I think; I made up my
 mind at the first visit. I cannot locate the disease in a case of "mono-
 mania" with precision.

296 I do not use the term "emotional centre," though used by men of
 high character; the boundaries of it are not distinctly located.

The mind manifests itself through the action of the brain; if the
 brain is disordered, then the manifestations must be morbid. I cannot
 tell what particular manifestation must be affected by the locality of
 297 the disease. The brain ordinarily means all that is contained within

the skull ; I could not with precision locate this disease ; I do not understand that the whole brain need necessarily be affected. It would not make any difference, in business his being an insane man ; insane men are often quicker witted than other men, and than they were before, and sharper at a bargain.

298 I presume that probably on the 30th of June he knew the act he was committing, but I think he was entirely incapable of knowing the civil consequences of that act, and whether it were right or wrong. He might have a correct appreciation of the act, but not in connection
299 with this subject. Abstractly, he might think it wrong to take human life, but not if under the influence of these feelings, then he thinks it right to have taken his wife's life. When he approaches this subject, the balance of his reason is lost in a moment. One moment he says his wife was the best and purest woman in the world, and then he says he
300 did right to kill her.

I have endeavored to form a conscientious opinion, and I am satisfied I could have disturbed the pulse of any sane man by conversing as I did with him, on the prospects of his execution and the death of his wife. I have not examined the cases of hardened criminals ; I do not consider want of appreciation of the act as evidence of insanity. He did not say anything to me about his wife having taken sides against
301 him in the horse case. I never was with Dr. Allen. Eccentricity is not generally or necessarily the indication of incipient "monomania," it is to be confirmed by developement, but is no evidence of insanity. As to the extent of his mental unsoundness, I make up my mind from
302 physical symptoms, that he has disease of the brain, and from the mental exhibition, I estimate amount and quality. There may be disease of the brain without manifest insanity, this is not common. I did not notice his ears ; I noticed the general expression of his face. There may be disease of the brain without insanity, but then the symptoms would be connected with other symptoms which would declare the nature of the case. I could not see manifestations of aberration of mind,
303 unless I saw the mind act. I should think that the prisoner committed the act with a manner somewhat excited but not highly so, and with a deliberate purpose. There is such a thing as an irresistible impulse to do an act which the subject knows to be wrong, to kill some one, even his friend ; he may ask others to restrain him, and has not power
305 of self-control. My opinion has been formed from reading and reflection. We do not acknowledge any work as absolute authority on insanity, as medicine is a progressive science. Beck's Medical Jurisprudence is a work of high authority. I do not know Ewell's Medical
306 Legal Evidence. Mr. Dexter told me he desired to form a correct
307 opinion of this case, if the man was guilty he was willing that justice should be meted out ; he did not desire me to render any opinion as to the cause. There are diseases which are obscure and about which different opinions may be formed, and there is no case about which physicians cannot differ, but in this case the conclusion is plain.

308 I examined the liver; I considered it was not the seat of any
organic disease. I think, I should, without a reasonable doubt, consider
the man insane, from the physical examination alone. Mr. Dexter
309 asked me to visit Hopps for the purpose of forming an opinion, he said
he did not intend to commit himself to a defence until satisfied that the
man was innocent; he would not be identified with it on any other
terms. Mr. Dexter introduced me as Dr. Wing.

The defence called Dr. N. S. Davis, who said in substance :

I live in Chicago; have lived here since 1849; am a regular prac-
310 titioner of medicine, a regular physician and graduate. I have been
connected with a medical college in this city since I came here, except-
ing one year, as Professor of practical medicine, and clinical medicine
in the hospital; I am connected with a Monthly Journal, the "Chicago
Medical Examiner."

I know the prisoner, but not before he was confined in jail; I was
311 requested to call upon him in prison and examine him, by Mr. McCo-
mas; I went in company with Dr. Wing and Mr. McComas. I en-
quired pretty closely with regard to his previous health, and carefully
examined the condition of his blood and his pulse. From the history
he gave of his previous health, it appears he suffered much from indi-
gestion and constipation for a good many years; there were periods of
palpitation of the heart and dizziness in the head; the secretions of
312 the kidneys were not natural most of the time, but scanty. From his
description, I recognised his urine as diseased. For a week previous
to the examination, he said his health was better, his indigestion im-
proved. He spoke of his constipation after he came to the jail; and
said he suffered much from bad feelings in his stomach and side. I
313 found his skin dry, but of natural temperature; his pulse small, weak,
and decidedly more frequent than natural; I think it ranged between
90 and 100.

The region of the liver and spleen seemed fuller than natural. By
applying a stethoscope, I discovered no evidence of diseased lungs; the
hearts' action was weak and quick, but the sounds natural; the temper-
ature of the heart was higher than the other parts of the body and un-
natural. His manner was quick and excitable, not as though he was
disturbed by excitement, but as if he was moving from some nervous
impulse; his manner of speaking was the same, he talked rapidly; the
314 disposition to wander off on side issues, as if he forgot the main topic
he stated, was prominent; this was so on all subjects; sometimes he
was a little lost in his expressions, so that before he could express him-
self the idea was lost. I conversed with him a little on his prosperity
and his life. He mentioned his jealousy of his wife; the only cause he
assigned for it was a difficulty about a horse, in which his neighbors
315 took part. He stated no fact, but only general allegations, that some-

- body had taken liberties with her ; he did not say who. He did not speak of any time when he was at the Sherman House, but said, when I asked for his reasons for suspecting the infidelity of his wife, that once, when in the city, he found her weeping, and he asked what was the matter, and she said, "if it was not for the horse difficulty they might be very happy," and this he regarded as suspicion of criminality. He did not say anything to me about Masons at the Sherman House.
- 316 I examined his countenance carefully. His manner was singular and excitable, and showed decided febleness of mental action ; his laugh struck me as indicative of much mental impairment, approaching "dementia," an idiotic sort of laugh. I formed the opinion that his mind was decidedly impaired and unsound. I should suppose the duration
- 317 of his disease to have been a number of years ; the change has been very slow. I never conversed with Dr. McFarlane, Allen, Smith or Parker, with no one in the city but Dr. Wing, on this subject. The fact that he was a shrewd business man, accumulating property would not diminish my belief in the least in his insanity. The excitement produced by derangement in its incipient stages, before it assumes its strongest forms, is undoubtedly for years misunderstood by neighbors and friends.
- 318 The fact of the insanity or "dementia" of a brother, would certainly have weight and tend to confirm the opinion I have expressed of the prisoner. The condition of a daughter, at the age of sixteen, growing rapidly very tall and thin, exhibiting nervousness so as to be unable to see strangers, having a twitching of the face, and sometimes St. Vitus' dance, would have less influence, as at that age there are other causes which might intervene to explain it.
- 319 If at the time of killing his wife, and subsequently to the time of imprisonment, the prisoner seemed totally indifferent to all feelings which would naturally arise in such a case, showing no sympathy and a stolid indifference ; I should regard it as additional evidence of weakness and impairment of mind. I was informed before I saw the prisoner that the question of insanity was important on the trial. The
- 320 fact of his brother's insanity was never alluded to. I was never called to administer to his wants as insane ; I have lived in the county thirteen years and never heard of the man ; I was not called upon to testify at any inquest before the County Court in August last. I have
- 321 not been requested to see the brother or girl. Mere bashfulness of a girl before strangers, would not of itself be evidence of insanity, nor a nervous twitching and convulsion after her mother's death a very
- 322 strange state.
- 323 The Defence called Dr. Robert Rae, who said in substance :

I am a physician ; have lived in Chicago eleven years ; am in general practice, and a teacher of medicine in Rush Medical College.

Physiology of the brain and nervous system are subjects of general practice in my profession. "Mono-mania," or partial insanity is believed to exist in our profession, I have not the least doubt of it. It is the general, and also my opinion that insanity is a disease of the brain. I have seen and examined the prisoner twice, once on Tuesday afternoon, and once on Thursday afternoon; my examinations were rather conversational, noticing from conversation the condition of his mind. I made no careful examination of his physical condition.

325 The ordinary pulse of a healthy man, aged fifty-three is about seventy. The rapid running of a pulse from 90 to 120, there being no apparent organic or chronic disease in the lungs, liver, or heart, would indicate the cause to be in the brain and nervous system. Insanity, like other physical peculiarities, is transmitted from parent to child.

326 My conversation with the prisoner was rather confused; his mind
327 showed a disposition to wander, I could not on this account detail the conversation; he seemed ready to converse; his wife was one of the first subjects that came up, and there seemed to be in his mind an anxiety to justify himself for what he had done, and he spoke something about a cow and calf; that he went late one night a mile or two a circuitous way to get, and when he was through he left it and said nothing more about it. He mentioned a law suit which had originated about a
328 horse, and arbitration, and that the difficulties grew out of that between his wife and himself; and that his neighbors from their dislike on that account to him, undertook to have his wife seduced in order to punish him. From his mental peculiarities, his high rate of pulse, unaccompanied by disease in the vital organ, I should think, without doubt, the
329 prisoner was insane. The fact of insanity in the family would confirm my belief; I merely looked at his temperament; a blow on the head might excite it, if there was hereditary insanity.

330 Mr. Dexter and Mr. McComas introduced me as Dr. Rae; Dr. Allen was there; my object was to form an opinion of his state of mind; I did so by conversation and the state of his pulse. Mr. Mc-
331 Comas conversed with him occasionally. I think he said he slept better now than when he came to jail. He said his wife was one of the best women in the world, that he loved her dearly before she fell into these bad habits; he referred to her faithful, industrious and domestic
332 habits. The calf and horse stories I recollect as evincing insanity. I was not in the jail with Dr. McFarlane; I was there Thursday last, neither attorney was present.

333 The Defence called Dr. Milton Parker who said in substance:

I reside in Chicago; am a regular graduated physician; have practiced about twenty years; I have studied insanity and mental diseases. I conversed with the prisener to ascertain the state of his mind,

334 and made a physical examination of him some four or five days ago
 before the commencement of this trial, I had been requested to do so
 much earlier. My conclusion was that the brain was diseased; that it
 produced morbid manifestations upon the mind; I regard him as
 insane. I have had a secret case of "monomania." The person may
 appear perfectly sane, unless he acts upon the delusion, it is impossible
 335 for others to tell of its existence. When company comes, in the case
 I refer to, in which there is no doubt, the patient can talk upon literary
 or any other subjects, properly and logically. I have seen a patient
 perfectly sane through the day, and insane at night; demean himself
 with propriety and elegance, and the change take place soon after, and
 336 baffle for days together the observation of friends as to whether he was
 insane or not. Insanity is purely the result of morbid action of the
 brain. I have no doubt that the defendant's is a case of chronic in-
 sanity. Mr. McComas asked me to go to the jail, I went alone; he
 said he wanted me to examine the prisoner mentally and physically;
 337 the question was the insanity of Hopps. I drew my conclusions from
 his belief in the reality of certain facts of which he adduced no proof,
 nor anything that had any relation to it. I talked to him in the pres-
 ence of counsel. He talked much of his wife, and of his former life,
 I might have asked him a few questions, he seemed inclined to talk
 338 upon these topics. A man, I think, could not have all his physical
 symptoms, and not have aberration of mind; he might have some and
 not be insane. I would not like to draw a conclusion from physical
 symptoms alone, as they might occur from other causes. It might be
 339 a bare possibility, that a man might have all the physical symptoms the
 prisoner has, and not have disease of the brain. From his physical
 symptoms, I should say the external portion, the convolutions of the
 brain are affected, as distinguished from the centre of the brain; I
 think his mind is affected at the same time, and these are the organs of
 the mind. If only one of the convolutions was affected he might not
 be generally insane. The brain may be supposed to be a congeries of
 340 organs having distinct objects and functions, and there is one of them
 affected, and therefore a manifestation of that organ is diseased. I
 341 have heard of an emotional centre. I don't think that his combination
 of symptoms could exist without sufficient amount of disease in the
 brain to affect his mind. His pulse at the most was feeble and quick,
 and at the carotid arteries it was much stronger, and nothing but in-
 flammation of the brain could produce that result.

342 Mr. McComas only was with me; he talked some with the pris-
 oner. The case I before alluded to, was an actual case of confirmed
 monomania. I hold that the mind cannot make any manifestations in-
 dependent of the brain; the brain is the instrument. The mind is a
 343 totality, and in its manifestations must subject itself to physical laws.
 I have known a man after having his skull broken live on with a sound
 mind. I never knew the defendant before; I designate his disease
 344 "monomania." The disease in this case may be in the central portion

of the brain and the other parts be sympathetically affected, as the tendency of disease is to spread.

345 Sometimes in the case of a fracture of the skull, the faculty of memory is impaired. The affection of one part of the brain would affect all more or less; the injury might be so slight as not be manifested in a decided way.

The defence called Andrew McFarlane, who said in substance :

I live in Jacksonville; have been a physician twenty-five years; lived before coming to Illinois in New Hampshire; am Superintendent and Physician in Chief in the State Hospital for the Insane; that is
346 now my sole employment. I had two interviews with the prisoner last Wednesday; one in the morning at about 10 o'clock, which lasted almost two hours; the other from 3 to 4 o'clock. Mr. McComas accompanied me; at first I intended to go alone, that I might attain his condition of mind without any bias from persons then present, but a gentleman with whom I was in consultation suggested that the prisoner
347 had jealousy of persons with whom he had no acquaintance, who made inquiries,—so I went at my preference, with Mr. McComas, and at my suggestion was introduced by him as a casual acquaintance, a Mr. Brown.

348 I made no special physical examination of the prisoner; my attention was directed to those matters of observation, which we passed
349 in the outward appearance of any man suspected of mental disease. It is well known, that mental disease imprints upon the outward appearance certain signs; these signs in the case of the prisoner are: First, a mixed temperament, nervous and bilious, nervous predominating. Temperament is an important consideration in insanity, as
350 insanity, especially inherited, chooses particular temperaments. His countenance was a matter of study to me, as indicative of the mental condition of the man. He has but three expressions; the first, of blank
351 stolidity and immobility, which did not change during a narrative, except when he showed a countenance, expressive of his profound conviction of the truth of what he was saying. He has but one smile or laugh, hardly to be called "idiotic," as there is too much intelligence in his countenance for that; but the laugh of a man, whose mind has lost
352 some or its natural force. The pupils of his eyes are immovable—do not change with the action of light; I believe his eyes are out of the dominion of his intellect, and under the dominion of his passions; I could discern something in his eye which was "fiendish," the lid of the eye being drawn back over the globe and showing the white all around.

In a great range of mental operation the prisoner's mind shows but small departure from the natural condition; I should think upon mat-

- 353 ters of common concern and general subjects, the operations of the mind are very little disturbed. Upon trains of thought, upon which his mind is diseased, it works with difficulty, and although he is intensely interested in giving his narrative, it is difficult for his mind to act continuously in that track, and to get on another subject gives relief.
- 354 On being introduced to him, I affected surprise that "this gentleman could be a prisoner," which necessitated his telling me, with apparent interest, how he came to be there, and the history of his life; my apparent interest and surprise kept him pretty closely to the narrative, except the fugitive cunning, which I mentioned. He told me of a diseased horse, which, while hired, died upon his hands; that the arbitrators, Filkins and Cassell, made him pay half the value of the horse; that before this they were his friends, but now endeavored to injure
- 355 him by the "Free Masons." They intended to injure him by one Peter Schenck's seducing his wife. Her want of sympathy for him in this horse matter led him to believe her unfaithful. The horse case was the first proof of his wife's infidelity. When I asked whether he had taken any steps to ascertain the actual fact of his wife's infidelity, he said he abhorred underhand measures, and did not wish to hurt the feelings of innocent persons—Mrs. Filkins, I believe. Another matter was the Filkins' toast—an obscene toast given by Filkins on the birth
- 356 of one of his children, which he interpreted that Filkins would not have given it, if he had not been possessed of secrets (through Schenck) of his marriage bed. Another ground of proof was the remark of Filkins, when he was bringing butter into town, "these women are very comfortable creatures." These reasons impressed me as entirely the creatures of the prisoner's imagination. The prisoner also adduced other facts, the onion story upon which he placed great stress.
- 357 Schenck was to have some onions, and Mrs. Hopps, (Hopps being away) showed them to him, and afterwards Hopps actually measured them out to him. Some months after, he said, Schenck called, and to "give him a home thrust," I said "this is the little onion boy," and then I knew by his countenance his guilt. Mrs. Hopps then came out, and I knew she came out to close Schenck's mouth. He said he thought this "was as much as spoke volumes." Hopps' voice, like his countenance, however great the interest of his story, never changes, except
- 358 when he has reached one of his conclusions, e. g. his wife's guilt, when it drops into a pitiable monotone. It seems from his expressions, "that his wife is going on from bad to worse," that each proof has still greater force in his mind. The last instance of his wife's infidelity, was in relation to a German, who worked at his house, making cheese,
- 359 who, he thought, had commerce with Mrs. Hopps in the cellar. When he had stated these facts, he said in the piteous monotone, "and indeed with almost everybody," as if his wife's infidelity was indiscriminate. These are the principal facts of my conversation with him; I noticed no difference in his manner in the forenoon or afternoon. My whole

idea of this case may be embraced in the words, "insane delusion,"
 360 that is, a belief in the reality of things or circumstances which
 have no existence, according to any probable experience or testimony.
 All definitions of insanity must necessarily be obscure. In the year
 361 1800 the idea of Robert Fulton of a steamboat was called a delusion
 and proved afterwards to be a fact, so a delusion may be such to a
 362 man and yet afterwards prove matter of fact. I think a man believing
 in an array of circumstances, which are contrary to universal expe-
 rience and common sense, untrue and impossible, the result of a fixed
 belief which is irremovable by any argumentation, would be laboring
 under a delusion. I believe the prisoner to be laboring under a delu-
 sion with regard to the facts, although the facts could exist.

363 One night, he told me, he was sleeping at the Sherman House, and
 during the night he heard some persons in an adjoining room going
 through the Masonic ceremonies, which he, as a Mason, understood;
 that from the beating of the triangle he knew it was the burial service,
 364 but there was some mistake, as he heard a woman's voice, who could
 not be in a Masonic Lodge. He said he went home and put himself and
 house on guard against the attack of the Masons. I am satisfied this
 365 was, and that is what I mean by a delusion.

I should suppose his to be a chronic case of insanity of long stand-
 ing. An insane delusion has a far greater force upon the mind than
 the rational conviction. A case occurs to me of a man confined at
 Jacksonville, who had committed no crime, but believed the Sheriff was
 going to hang him; so strong was the delusion, that wrenching the bars
 366 from the window, he jumped from the third story and was killed. A
 man under the force of an insane delusion would put his hand in the
 fire to save his soul.

Delusions are as varied as the imagination of man can conceive
 or suggest; there are hardly any two insane delusions alike; even in
 367 the case of relations, who are insane, the delusions are entirely different,
 and whether a man squanders his property, thinking he owns the Bank
 of England, or kills his wife, thinking she is a prostitute, one delusion
 368 is not stronger than the other. The prisoner's is a remarkable case of
 a clear unmixed delusion. It is rare to see an insane person with so
 deep running, and yet so narrow a delusion; the depth of his delusion
 is greater than that of a fourth part of those in Asylums, and yet few
 would be found in Asylums with the same general clearness. The man,
 I instanced, who killed himself was of precisely the same state of mind
 369 as Hopps. The care of the insane, with all their physical diseases has
 been my exclusive business between sixteen and seventeen years. Dr.
 Allen addressed to me two letters, the last on Saturday the week before
 last; I reached here Tuesday night; I received no other communi-
 cation from any one; he did not meet me; I came under voluntary
 370 engagement. My first letter from him was a note giving, as is profession-
 ally usual, the facts of the case, that I might be induced to leave my reg-
 ular duties. I estimated, by request, my necessary expenses at \$50, my

371 salary is paid by the people and my time is theirs. I came, as I knew
 it was probable a subpoena would be served upon me; the second letter
 on Saturday, week before last, said the hearing would come on at an
 early day and wished me to come on, without further ceremony. I ar-
 rived Tuesday night; nothing was told me, at my request, but the facts
 of the case. Mr. McComas, I think, suggested that I had better not go
 alone. I saw the prisoner walking in the main Hall of the jail; Mr.
 McComas called and he followed him to a large room up stairs. Mr.
 372 McComas remained in the room during the entire interview, but was
 not near, except at the beginning of the conversation. I would not
 have relied for my conclusion on the physical appearance of the pris-
 oner alone, I could not have formed a satisfactory conclusion without
 373 hearing him talk. I was introduced at 10 o'clock in the morning; he
 was in his shirt sleeves; I think he did not shake hands. I first ad-
 dressed him, interrupting a conversation with Mr. McComas.

374 Every individual has not a mixed temperament, some have exclu-
 sively nervous. There is a difference in laugh; there is a laugh
 peculiar to intelligent and one to demented persons. Power of con-
 475 centration differs; there is however, a certain standard which indicates
 a sound mind. It is a peculiarity of dotage to go into minutiae. I did,
 emphatically place particular reliance upon his narratives, as evidences
 of his delusion.

376 There is a difference between the Sherman House transaction, and
 a bad dream, but that transaction derives its weight from its connec-
 377 tion, the mere fact of hearing the Masons might be a dream; but the
 fact of arming himself and his friends disproves that. If at the time
 of the Sherman House affair, he were on the verge of delirium tremens,
 it would make a difference, with this qualification, that the hypothesis
 378 proves nothing, unless a case with all the facts is before one; the fact
 also of his having at that time an actual difficulty with the Masons
 would make a difference. Even if the horse difficulty were a fact, still
 to base such a delusion upon such a premise would be a delusion;
 mingled malice and jealousy could not produce such an effect.

379 Jealousy and insanity are distinct, but no jealousy could have driven
 Hopps to this excess.

Question—Are you acquainted with the tale of Othello as given
 by Shakespeare? if so, state whether the character there delineated is
 an insane man or a jealous man.

The Defendant objected to the foregoing question which objection
 was overruled by the Court, to which ruling of the Court the Defen-
 dant then and there excepted.

380 In the play of Othello, where the handkerchief is held up before
 Othello's eyes as proof of infidelity, it is clearly Shakespeare's intention

to carry his subject beyond the bounds of reason, there was a flash of insanity. There is a class of physicians who are carrying the subject
 381 of insanity forward, but they do not think that those who have strong
 idiosyncracies, and commit some great crime are insane; no writers of
 merit believe in moral insanity. The opinion of Doctors Parker and
 382 Gilman, that Huntington was morally insane, has been scouted by the
 profession. I have read Dr. Rae's book and regard it as fair authority.

A person with a correct abstract idea of right and wrong, may yet
 383 consider himself justified in an act; in that case he should not be pun-
 ished. If after the act and in relation to the act, he expressed regret,
 I should, with some qualifications, regard it as an evidence that he
 knew he was wrong; the secreting the knife would be no evidence.

The delusion would impel the act irrespective of place, circum-
 384 stance and employment. I do not think at that time, liquor alone would
 385 have induced this act; nor would his being drunk or sober, in my esti-
 mation, make any difference. From the testimony, and what I know
 of the prisoners's mind, I think there was preconceived justification.

One witness said he expressed an intention to kill his wife. Liquor
 386 acted as a general excitant, making his idea of killing more positive
 and clear. Insanity is the parent of delusion, and liquor may have
 reacted upon the insanity independent of the delusion. As an
 excitant liquor acted, but in producing the murder at that time it acted
 387 only as a secondary agent. Liquor acted upon the disease; despite
 the fact that he treated his wife uniformly well when sober, yet liquor did
 not act primarily. Even if a temperance man he would have killed
 388 his wife. A homicidal act would be the natural result of his threats.

His disease was a paroxysmal one; at such times his appetite for
 389 liquor was increased, so that it is difficult to say how much was owing
 to liquor—how much to the fundamental delusion. I have had much
 experience in cases of men who have committed homicide; I never
 390 knew the McNamee case; those who commit the act in drunkenness
 through grudge, show contrition; persons sometimes nerve themselves
 391 with liquor. In the case of a murder through hatred, I should expect
 392 contrition and remorse. I should think any man of ordinary constitu-
 393 tion would, the next morning, see the enormity of his act, even if he
 394 had contemplated it and had an old grudge.

Mental insanity is where insanity is confined entirely to the intel-
 lectual operations, where it is simply a disturbed state of the process of
 thought, without any great moral perversions. Those who hold the
 doctrine of moral insanity, a doctrine abhorrent to me—hold that a
 man may be corrupt in his moral nature. Large numbers of the insane
 have mental as well as moral perversion—pure mental perversion is not
 common.

Liquor produces a general excitement of the passions, above all,
 395 anger and resentment; this anger is diffusive—extends to all alike;
 but in insanity, especially insanity with a delusion, the resentment is
 special against a particular person.

396 When a man, excited with liquor, returns to precisely the same brain
delusions, insanity may be suspected, but when he is only generally
397 excited it is the legitimate effect of the liquor. The drunkard is for
the time being under the influence of delusion. Abstractly an insane
398 man may have the idea of right and wrong, yet be moved by an uncon-
trollable influence to do acts which, on general principles, he knows are
wrong; he might think he had a sufficient justification to kill, and that
the laws of his country do not take this into sufficient consideration.

399 In one case an individual may reason from what he supposes to be
a reasonable justification; in the other he is impelled by a recognized
400 disease of the brain. In the first case he would be criminal, although
he might feel justified. An act of homicide committed in a rage admits
of no reasoning, yet a man in a passion might know whether it were
right or wrong; it is the passion of a moment, not the reasoning justi-
fication which induces him to think it right. I understood Hopps' re-
grets to be general regrets at the whole transaction, at his wife's infi-
delity, at the circumstances of his family, regrets that the act had to
be done. I said I understood Mrs. Hopps was a very amiable, excel-
402 lent woman; he checked me, saying she was a very useful woman, neces-
sary to a family, not allowing me to carry out the idea implied in amia-
ble; then he said it was a pity it ever happened, that she ever went
403 bad. I should think there would be a difference of contrition for the
killing of an enemy and a cherished wife. Liquor revives old grudges,
and makes an insane man more insane; it acts as a general excitant.

The Defence called Dr. Dyer, who testified in substance as fol-
lows:

414 I was a physician in this city for twenty years; it is now six years
since I have practiced. I have known Mr. Hopps about twenty-four
years; I have known him casually; used to meet him in the county at
divers times; never knew him very intimately. Sometime anterior to
my removal to town in 1856 he used to meet me, stop and converse;
then I thought he was a little crooked in the head. There were two or
415 three instances; they did not make a very strong impression on me,
and perhaps would not have been recollected but for circumstances
that transpired subsequently; for instance, once he stopped to talk pol-
itics—he stopped me on the sidewalk, and pitched into the opposite
party in so severe a manner as to strike me as rather inconsistent; it
struck me as a little crooked in the head; I should say it was aberra-
tion of intellect. Once before and once after that time he met me, and
seemed to be very glad to see me; at first I thought he was mistaken
in the man, but he said he had some business with me, and then he
would walk along with me and slip into some place, and when he came
416 out would not say anything about the business, and he treated me
afterwards in the same way. During the time I was building the

417 Court-House I had a conversation with Filkins as to the mental sound-
ness of Mr. Hopps. I saw Hopps once after this, and my attention
was more turned to it by the conversation with Filkins; it was Joseph
418 Filkins; the impression was that Hopps was a little crooked; I looked
after him as he went down street and thought he acted like man who
was not quite clear in his intellect. Hopps is not a patient of mine;
he may have consulted with me in early times. I have no means of
418 knowing whether he had been indulging in liquor; I never suspected
him of it, and never heard it; my attention was not called in that
direction; it did not strike me he was in liquor. The third interview
was after I had talked with Filkins.

The Defence called Henry Merrill who testified in substance as follows:

421 I know William and Ralph Hopps. Myself and Van Vlack got up
a petition to secure something for the livelihood of Ralph from the es-
tate of William or some other parties. I understood that William had
received something from England belonging to Ralph. Van Vlack
and myself first started the idea of having a conservator appointed.
Ralph wished me to do it for him. William Hopps nor his counsel in
this case neither asked or advised me to get up that proceeding. The
422 object was merely to secure Ralph's interests. Van Vlack and I got
up the petition to have a conservator appointed to get what William
owed him. Ralph requested us to do it but did not say anything about
his insanity; he had been talking about doing this before William was
arrested. Ralph asked me about it several times and I spoke to Wil-
423 liam about it at the April election. After William was arrested he
thought that was the time, if ever he was to have anything, to get it be-
fore the trial came off; he was afraid he might lose it. Ralph did not go
and see William because they had had some little difficulty. I heard
William say he was owing Ralph. Ralph had a lucid interval; he did
seem anxious that measures should be taken to secure the debt; he
424 asked me to go to the County Court and take some proceedings before
this trial came off. I did not know he was insane. We knew that
something was the matter with him. We thought he was not exactly
right, he was simple. I have lived near him and worked with him
twenty-two or twenty-three years; he is a man who apparently was
never capable of doing business himself. I always understood that he
lived with his brother from a boy, and when he became weak-minded
his brother did his business; when he left him he requested me to do
425 it; I did it. I went to Mr. Eldridge and he suggested that we should
take him before the Court and examine him, and have the doctors ex-
amine him; the doctors did not pronounce him insane. The doctors
were Fisher and Blair; they had an examination before court and jury;
Mr. McComas was present. William Hopps and I have been on

426 friendly terms, except some little trouble; when I spoke to William he
 said if there was any settlement Ralph might come and make it. When
 I first knew Ralph he was living with his brother; he went into Indi-
 ana and there run a threshing machine; he was not then in the condi-
 tion he is now; about the time he quit running it we saw the change
 in him; I discovered a distinct change in his character, not doing bu-
 siness as he used to. He has hired himself out and made his own
 bargain. When he got money he would take a little for tobacco and
 427 give the rest to me. At the time of the County Court he got thirty-one
 dollars, he gave thirty to me and kept one; he had a guardian ap-
 428 pointed; I supposed I had no need to give it to him. When I came
 to town I told my lawyer he was weak-minded, insane, or I did not
 know what. The jury found Ralph to be distracted; the doctor
 said he was neither insane nor lunatic, but weak-minded. He did not
 429 use tobacco or liquor to excess. I swore to the affidavit on which the
 proceedings were had in the County Court. Mr. Eldridge drew it and
 I heard it read.

The defence called John Little, who testified in substance as fol-
 lows:

430 I live in Kankakee County. At the time Mrs. Hopps was killed I
 was in Mr. Schenck's back yard, about forty rods from the Hopps' place,
 431 on the same side of the road. I heard a loud noise at Hopps', and the
 second time I heard it I went up there. It was between sundown and
 432 dusk. He said he killed his wife because it was right, and that he was
 not sorry for it. He said he called on Mr. Luce, Schenck and Little to
 take notice of that fact. This was said in their hearing. He said he
 was not under the influence of liquor, and called upon the same per-
 sons to take notice of that fact. He said he was not under the influ-
 ence of liquor, as Mr. Schenck said he was, but was in his right mind,
 and knew what he was doing. He talked pretty rational when I talked
 with him, as though he knew what he was talking about; that was
 433 about half an hour after I got there, and I got there about ten minutes
 after Mrs. Hopps was stabbed. I found only Mary and the younger
 children there. Peter Schenck and Mr. Luce came afterwards. When
 434 I got there, Mr. Hopps was the first man I saw; he was sitting just
 inside the door; it was not dark; he spoke to me first, and said "good
 evening, Mr. Little." I said "good evening, Mr. Hopps," and passed
 time day with him. He asked me to take a chair. I asked him what
 the trouble was; I said there was almost too much noise to have things
 going on smoothly. "Not anything of any consequence," was the ans-
 436 wer he made me; he appeared to be perfectly cool, and appeared to
 me as though he was sober. I asked him if he was not sorry for what
 he had done; he said no, he could not say he was sorry if they were
 437 to take him right out and execute him. Mr. Schenck was there then.

REBUTTING TESTIMONY.

The people called Jacob Hunsinger, who testified in substance as follows :

448 I reside at Wheeling, about two miles from Hopps' place, and have
known him about eleven years; I kept tavern in Wheeling the day
449 Mrs. Hopps was stabbed; He was at my house at eight or nine in the
morning; he was going to mill; he drank once or twice; I believe he
450 took whisky. In the afternoon, on his way back, he stopped for some
time, and drank four or five times; more or less; I mean during
that day; probably three or four times after he came from mill; I be-
451 lieve he drank some beer in the afternoon; more beer than whisky.
Mr. Matteson got a gallon of whisky that afternoon; he said to Hopps
that if he did not get chance to ride he must walk home; Hopps said
he would carry him; I did not see them start; Hopps was there when
452 I left; when he went to mill he had some grain; when he came back
the wagon was empty; he and Matteson were drinking together at my
house; he had some cross words with the blacksmith.

The Defendant here objected to the introduction of testimony to
prove new instances of drinking, as this was rebutting testimony. The
objection was overruled by the Court, and the evidence admitted. To
the decision of the Court in admitting the same the defendant then and
there excepted.

453 During this difficulty he acted a little crosser than he had some
454 days; it was about a wagon; they would have had a fight; I told them
to keep quiet, and they did; this was about two o'clock; they did not
455 swear, but talked as though they might fight; Mr. Blodgett was there
after I had gone. I saw Hopps again that day a little way from his
house on the way home; it was between five and six; I drove right by
him, bowed my head, and said, "Are you going home?" He did not
456 answer me; he was alone; my wife's sister was with me; I thought
Hopps was a little crosser that day than on some others; I never saw
457 much strange about him whether he was sober or drunk; he always
dealt fairly. When I met him on his way home it was light enough to
458 see him distinctly; he was in a two horse wagon sitting up and driving;
I told that lady "I guess Mr. Hopps is pretty sober to-day;" "I thought
he was on a spree to-day;" he drove slow that day, and when he was
drunk he drove like everything; I was afraid he would go home with
Matteson and get on a spree, and I said "I guess Hopps is pretty sober;"

459 I did not speak very loud to him, and the noise of the teams might have prevented his hearing me; I have known him for many years but he did not recognize me at all; I said I was satisfied he was not drunk when I met him; when he is drinking, a little more tends to keep him in good humor; Matteson lives two and a half miles south of Wheeling; I never saw him cross when he had liquor, and I have seen him so tight that I had to put him to bed. Once last winter Hopps was drunk and fell off the wagon; he was pretty drunk at that time. Sometimes when drunk he would sing; generally he was pretty happy. The night he fell off the wagon I put him to bed. The evening I met Hopps going home he sat pretty straight in the wagon.

The people called Avery Blodgett, who testified in substance as follows :

462 I live at Wheeling, and know Hopps was at Honsinger's Tavern on the day Mrs. Hopps was stabbed; I got there about 4 o'clock in the afternoon; saw Hopps; he was about drinking just as I went in; Mrs. Honsinger was tending the bar; he invited me to drink, and I called for a glass of lemonade; they had no lemonade and I called for wine; 463 Mr. Hopps said I had better take whisky; he took whisky I supposed; he said he had not worked any for two or three weeks, and that whisky made him feel like killing everybody; he spoke of his arm and shoulder being hurt; I knew of it; I do not of my own knowledge know that 464 he drank at that time; I left about 5 o'clock with him; we went to Matteson's, and from there I returned with him to Wheeling; he said 465 he wanted to talk on business, and after we started back he commenced talking on business, and talked at first very regular, and then a little wild, he talked some on business, as usual, and then he would fly off and talk rather wild, his words were, "He cared for nobody, and why 466 should he." I have seen him when he was in liquor and when he was sober, but I did not consider him drunk at that time; he was a little delirious, I suppose from the effects of liquor he had drank, not that day, but before. In the conversation he spoke something about his family; he wanted to take care of his children; as to his wife she did not care anything for him, she had told him so lots of times. Sometimes he talked as usual, and then would fly off from one thing to another; he would start off on one question and change directly and wildly without regard to connection. His manner was different from any time I had 467 seen him before, whether drunk or sober. At that time I did not consider him drunk; I had seen him drunk, and was acquainted with him 468 enough to know when he was drunk. Matteson took along a jug which he called whiskey; there was no drinking between the tavern and Matteson's; Hopps drank after he got there; he went to drink three times; the last time it was very small; I did not notice the other times; we

started right back. I formed my opinions from my knowledge of the man, his manner and appearance.

The people called Joseph Spinhiser, who testified in substance as follows :

469 I made cheese at Hopps' the summer of 1862; I was there the
evening Mrs. Hopps was stabbed; I did some business with Mr. Hopps
470 about 10 o'clock in the morning of that day; he was going to Wheel-
ing, and I gave him some money to get me some cheese runnett; I gave
him three dollars. When I was going to bed that evening Mr. Hopps
471 said, hold on, Jo? I have got some change for you, and the runnett you
will find in the wagon, and Honsinger gave me fifty cents for you; I
had sent him cheese twice; the money and change was exactly right.

The people recalled Alonzo Hawks, who testified in substance as follows :

. I was there the morning after Mrs. Hopps was stabbed about 9
472 o'clock. Hopps got some oats from me in the spring, and the bargain
473 was that he was to pay me what I got for mine when marketed. When
I went in he was on the lounge, and asked me to come and settle; he
said, "I guess I had better pay you for those oats, you have got no note
and may have trouble about it." I told him they fell short eight bushels
to the hundred; he said that was right, he had weighed them; he took
his pencil, figured up the oats correctly, and paid me; he said he did
not get quite as much for his.

473 I have known Hopps for fourteen years, and lived for the last
seven about a mile and a quarter from him; sometimes I see him a
number of times a week, and then again not for a month. I should
474 not call him proud, but he always seemed to have an idea of liking to
have a good reputation. When I settled with him two or three men
came up and presented notes for payment, he said gentlemen, "You
475 have got notes, when they are due they will be paid." His wife was
away at Paw Paw Grove; he said liquor was the cause; this was sev-
476 eral years ago; he said he would sacrifice his thumb and fingers to get
477 her back. After the Constable arrested him I took a seat by his side
and asked him how in the world he could do such a thing. He said he
had done everything for her; built a house and furnished it, and she
had gone off and said bad things about him, and it was no good woman
that would do so, and said she is a big strong woman, and had seized
him by the throat; there were some marks that looked like finger
marks on his throat; have never seen anything peculiar about him more
than the effect of liquor.

The People called John Rocket who testified in substance as follows:

480 I have known Hopps ten years; am a blacksmith and live at
481 Wheeling; saw him the day his wife was stabbed towards evening
482 about six o'clock; I put a shoe on his horse; he was talking about bad
483 money; said the progress of banking would break down the State; I
484 have done work for him for five years. I heard him make some statements
485 in the Masonic Lodge about his wife. He said he abused her
486 and would not have done so, if it had not been for liquor, he was sober
487 when he made the statement. I never saw anything peculiar in him
488 when sober.

484 The People called Peter C. Schenck, who testified in substance as follows:

485 Have lived about forty or fifty rods west of Hopps seven or eight
486 years next April; was there the evening he stabbed his wife, about
487 half past seven. When I went in I said, "What on earth have you
488 been doing," says he, nothing more than I intended. I sent a boy
489 after the doctor; Mr. Hopps was there but he did nothing. I made observation
490 to Hopps that it was through whiskey he had done this, he
491 said, "It is not through the influence of liquor, not at all, for the time
492 had been long coming on, what he had done; for this has been contemplated
493 for the last ten years;" that was all the conversation I had with
494 him. I was walking between the kitchen door and piazza, and stepped
495 on the knife, (here in court,) there was blood on the blade; I took it
496 and gave it to the Coroner; there was some grass where the knife was;
497 it was pretty dark and I could not have seen it without stepping on it.
498 I have never discovered anything peculiar in him when he was sober;
499 when sober he was very still, when in liquor pretty talkative; in the
500 absence of his wife he kept pretty sober. There was something said
501 about his calling on those around, to take notice that he was not intoxicated,
502 that was in the kitchen. He said the act he had done was right.
503 That is my signature to the Coroner's minutes; the oath was administered.
504 When I made oath I did say I had heard the statement Mr. Little had made.
505 My evidence and Mr. Little's agreed. I did hear Hopps say, I want you and Mr. Little and these to witness that I was
506 not under the influence of liquor; he showed a little appearance of liquor;
507 I might be mistaken in this. I did swear before the Coroner that he talked rational and natural. He came to my house Sunday
508 once about a line fence; we had some words about it, and finally, he
509 accused me of carrying away his woman. I told him she came there for protection.

The People called George Strong, who testified in substance as follows :

498 I am a farmer, and live $3\frac{1}{2}$ miles from Hopps; have known him
ever since he came there, about twenty-five years ago. I meet him
499 often. I never saw anything which led me to suppose anything ailed
500 him but liquor. On the first of September, 1862, I went into jail to
see Hopps at his request. At that time or another I saw some ten
or fifteen bottles in his cell; he said he kept a little to take himself.

The Defendant here objected to evidence showing Hopps' drinking in jail after his arrest, which objection was overruled by the Court, and exceptions then and there taken by the prisoner to said ruling.

501 He said he expected to have a trial soon, and as I was a man of considerable influence he wanted to put me right on the question that was up. I told him that I believed liquor was the cause of it. He told me he was not under the influence of liquor, but was crazy, and did not know what he was about at the time, but said he was rational now. I told him that I recently understood he had charged his wife with infidelity. I asked if it was any one in the neighborhood. He said the person was dead, and he did not like to mention his name. Nothing was said upon the subject of counsel. I don't know whether he had any at that time.

The People called James Mitchel, who testified in substance as follows :

502 I have known Hopps for twenty years; saw considerably of him formerly, not so much lately; have never seen anything in him which struck me as peculiar.

The People called E. T. Colby, who testified in substance as follows :

503 I have known the defendant nineteen years. I am a lawyer; was
504 a partner of Judge Bradwell. We did some business for defendant;
I always considered him a good business man and a good farmer. In
505 May or June, 1862, we collected some money for him, and I have had frequent interviews with him on business. I did not discover anything singular or peculiar about him.

The People called Peter Olinger, who testified in substance as follows:

507 I worked for Hopps when he stabbed his wife; was milking at the
508 time; the first I heard was Hopps calling his wife hard names, damned
whore or bitch; soon I heard the woman call my name, Peter. I went
down to the house, and saw Mrs. Hopps; she stood near the little
gate; had hold of the gate; she said, "Never mind, Mary, I go to
509 heaven." This was on Monday night. Tuesday night of the week
before he had abused his wife; he came out and proposed to fight
510 Louis (one of the men); Louis said, "You are not stout enough."
Then he went to another hired man whose name is Gattlief, and said,
"I will fight you." This man said, "If you want to fight, go and fight
Peter." He answered, "That is fair; if you say so I will." He came
at me with, "I fight you." He did not do anything only for fun. I
said, "I would run away." He said, "I will catch you." I said,
"Try it," and started, and he followed me. We run around the house
a couple of times, and sat down, I saying I had fun enough and would
go to bed. He said, "That's right, Peter, I shall do so too," and we
went into the buttry, and drank once, and I went to bed. He sent for
me to come and see him in October in jail. He said he wanted to see
511 me about that story that folks said he followed me with a butcher-knife.
I said, "Some folks told you a lie." He asked, "What for did I follow
you?" I told him, "For fun." Says he, "Fun don't save much life."
512 He said, "You tell a different story from other folks; my lawyer
wanted that if you will tell the same story these other folks tell, it will
help me a good deal."

The people called Michael Hopps, who testified in substance as follows:

These two signatures (two shown the witness) I should doubt if they were the hand-writing of defendant.

512 The people called Mrs. McNabb, who testified in substance as follows:

513 I am a daughter of the defendant; know his signature; these (referring to those shown) are his.

517 The people here offered papers in evidence dated 25th November, and the record of judgment, the admission of which was objected to by the defendant, the objection overruled, and the evidence admitted by the Court, to which ruling of the Court the defendant then and there excepted. Certain documents alluded to read by counsel for the people.

The people called Wm. L. Greenleaf, who testified in substance as follows:

I am Deputy Clerk of this court. The papers containing a judgment entered on the records of this court. Judgment note here read in evidence.

The people called J. J. Beardsley, who testified in substance as follows:

520 I knew Wm. Hopps in Vermont from 1832 until three or four years
after; I should not recognize the prisoner at the bar as a man I had
522 ever seen before; from 1832 to '37 I kept Custom House at Franklin,
Vermont; during the time I knew Hopps he was engaged in carrying
merchandise into Canada and bringing stuff back; he had several teams
employed at one time; I regarded him as a shrewd, resolute man; he
generally called at my office and paid duties, but he did not always
call.

The defendant objected to the above testimony, which objection was overruled by the Court, and exception then and there taken to said ruling by the defendant.

The people called Pallas Phelps, who testified in substance as follows:

524 I have known the defendant about thirty-one years; knew him in
Franklin county, Vermont. I knew Beardsley in 1831 in same county.
525 Hopps was engaged in trade; his business was a good deal of it in
Canada.

The defendant objected to the admission of the above evidence of the last witness, which objection was overruled and exception thereupon taken by the defendant to said ruling of the Court.

526 He was dealing in merchandise generally, purchased in Canada and
brought into the States. I knew him well; resided four years near
him on the same street, and eight years opposite to him. I came west
two or three years after he did, and with that exception have known
him ever since; I never saw anything peculiar about him; I knew
nothing against him in Vermont except his being engaged in the viola-
tion of the United States law in smuggling.

527 The defendant here moved to exclude all the testimony of the two
last witnesses, Phelps and Beardsley, in relation to the defendant's
smuggling in Vermont, which motion was overruled by the Court, to
which said ruling the defendant excepted.

*See authorities
on the 12th page
of brief-*

My own observation is that he managed the business shrewdly and and seldom got caught, in fact, I don't remember that he ever got caught; he had a span of black horses distinguished for their great speed and endurance; he fed them very high in winter; they generally rested in the summer; he said he could run them twenty-five miles on a stretch without feeding; I am a lawyer, not much in practice, although I have not retired from it. Hopps gave me to understand, by inuendo, that he smuggled, although he did not tell me so. I was indicted for forgery in Vermont and acquitted; I was convicted in the Circuit Court and acquitted on appeal; I did not commit the forgery.

The people called A. F. Miner, who testified in substance as follows :

534 Have known the defendant since fall of 1855; have done some joiner work for him.

Question—" Did you ever have any conversation with him during the time of your acquaintance, in reference to the business he was engaged in down East ?

Which was objected to by defendant, and the objection overruled by the Court, to which ruling of the Court the defendant then and there excepted.

535 I heard him say while living in Vermont, he had some deal backward and forward from Canada into the States; he said he lost some money and run some severe perils. When I was at work on his house
536 he was very particular, and gave minute directions. I never discovered
537 anything peculiar in him. He appeared to me to be a very fine business man.

The People called Milo Winchell who testified in substance as follows :

538 I am a farmer; have known defendant from twenty to twenty-five years. I am Master of the Lodge at Wheeling. Hopps was a member of it; became so in '50 or '51. He has admitted to me about his drinking and abusing his wife, and always promised to do better when I spoke to him about it; this was at different times; mostly while she was away. He was trying to get me to help him get his wife back; he
540 was sober then and said he could not live without her; this was four
541 or five years ago. I told him that I should write her if she did come back to have him taken care of. He has always acknowledged his faults when labored with by different members of the Lodge; he

542 said liquor was the fault and his wife was perfect as far as human being
could be. It never entered my mind that he was different from other
543 men when he let liquor alone. There never was anything in that
Lodge that could have excited a suspicion that the Masons intended
taking his life. He never saw the letter I wrote to his wife, unless
544 since it has passed out of my hands; after I told him what I should
say to his wife, he still requested me to write; I don't think he asked
me to write his promises of reformation.

The People called Levi Aft, who testified in substance as follows :

546 I live in Wheeling; keep store opposite Post Office; saw Hopps
about 5 o'clock the day his wife was killed; he was in his wagon in the
street. A man was coming down the road who was in liquor; he was
walking in the ditch and called to Hopps to see if he could ride; Hopps
did not understand him, and asked what he said. I said don't mind him,
547 he is drunk; "Well," says Hopps, "he must not insult me," but says I,
he don't insult you; saye he, "hold my horses and I will get out and
lick him with one hand;" I said don't trouble him; he said "right" and
drove off; he seemed a little mad but did not get out.

The People called E. R. Beech, who testified in substance as follows :

548 I live in Wheeling two miles from Hopps; am a blacksmith; have
known Hopps fifteen years and done work for him. I know his family
well; in August, 1857, between eleven and three at night, she came to
549 my house on foot and alone; she staid at my house an hour or an hour
and a half. I took her over to Winchell's. When he was looking
550 for her I told him about her coming to my house, and that she said he
had been taking liquor and had abused her; he admitted it and said he
would quit it. She came there one night the next season the same
551 way; she staid an hour and I sent her to Mr. Winchell's again. I
don't recollect that I afterwards had any talk with him about her
552 coming there the second time. He said afterwards it was drinking and
he was not going to take any more liquor; he said when he had no
553 drink he never abused his family. He said his wife was as good a
woman as the Lord ever made. I never discovered anything singular
554 in him; he was a good, upright man in business as I ever dealt with.

The people called Rebecca Luce, who testified in substance as follows :

555 I live about eighty rods from Hopps'; was there the night she
was killed—about half an honr after it happened. I staid with her all
night. She was aware she was going to die from the wound. She

556 told me about an hour before she died, that she was not aware of his
having the knife; that he had it concealed in his sleeve, and that she
never knew why Hopps treated her so cruelly; she said she would like
to see Mr. Hopps, but was so faint and excited she could not. Once,
557 Hopps came to our house quite early in the morning, and wanted to
know if his wife was there. I told him she was not. After breakfast
I went over there to see the children. He said when the men went
out, they told him there was a woman coming across the field that
looked like Mrs. Hopps, and he said, "oh, it is you; I thought it was
ma." He said it was nothing but liquor that caused the trouble, and
558 that he would not drink any more, and would sacrifice every penny
of property he had in the world to get her back. I knew the sickly
daughter; she has been natural and rational; has been out of health;
559 had some female diffiulties. The morning of her death I was there;
Hopps appeared just as he always did; before he left he gave some
particular directions about money and business matters. He said
560 \$200 of the money was borrowed money, and that was to be paid first.
Never heard him say anything about being jealous of his wife.

The People recalled Henry Merrill, who testified in substance as follows:

561 When Mrs. Hopps was about dying, Hopps laid on the lounge;
some one said, "Mother is about dying," and as the family were about
going in to see her, (Martha the daughter was very sick,) he raised
562 his head and said very sharply, once or twice, "Don't take Martha
there," or "in the room." I know Hopps well; see him often; never
saw anything peculiar in him; he said the cause of abusing his wife
was nothing but liquor; when he had whisky the devil was in him.
563 He sent for me to talk with him; he said he could not live without
his wife; could not enjoy himself without her. He was sober when
he was makinhg these remarks.

The People called Benjamin C. Luce, who testified in substance as follows:

564 I am conservator of Ralph Hopps; have known him since fall of
1837; Ralph seems simple and weak-minded; he is able to do work;
I have lived for twenty years past within 160 rods of Hopps; I never
565 saw anything peculiar about him when he was not in liquor. Next to
the last time she left him, I talked with him about her leaving him; he
said it was nothing but cursed whisky; he said he could leave liquor
566 alone, and would. I saw him in jail in August last; I was in two or
567 three times about the conservatorship. He said he regretted it very
568 much, and would give a world, yes, a hundred worlds, if it could be
recalled, and he could go home with his family. The second time I

569 was in I could smell his breath and see that he had been drinking. I
settled with him about Ralph's business, and he requested me to see
Mr. McComas, and I did so. He said that all his seeming kindness
before people to his wife was hypocrisy, and he did not mean it. One
570 time I was in his cell, and he was filling up some bottles, out of a gallon
measure, with beer. I was there soon after he stabbed his wife. He
said he did not wish us to understand that he did it under the influence
of liquor, for he did not; he knew what he was doing, and had con-
templated it for ten years. Ralph Hopps was not always foolish. I
571 should say the change came fifteen or sixteen years ago. He always
expressed the greatest kindness and affection for his family and chil-
dren, and inquired particularly after Martha and the youngest. I can-
not say but the desire he expressed to get out was in this connection.
572 I would not give the conversation word for word, nor in its order. I
was talking about what a good woman his wife was, and how he pre-
tended to love her. He said it was all hypocrisy. I recollect when
573 Hopps was thrown from his wagon; he was badly hurt, and was very
drunk.

The People called Egbert B. Van Vlack, who testified in substance
as follows:

574 I have lived at Wheeling twenty-three years, with the exception
of six years at Chicago. I am a carpenter, and took contract to build
575 Hopps' house. I never saw anything wrong or peculiar about him;
he was particular about his house; it cost him about six thousand dol-
576 lars. I saw him in jail on the 4th of July last. I talked with him
some two hours; he seemed to have a very good memory; called to
577 mind some things I had forgotten; he said the reports in the papers
were incorrect as to his premeditated design; he said there had been
difficulty between himself and wife for ten or twelve years, but he had
not told any one that he intended to kill her; he said, "I would give
a world, yes, a hundred worlds, to put it back, to undo it." I intro-
578 duced Mr. Merrill to Mr. Tourtellotte; that was about two weeks be-
fore the petition was filed.

Question—Did you have any conversation with them as to what
was the matter with Ralph.

The defendant objected to the foregoing question, which objec-
tion was overruled by the Court, and thereupon the defendant then and
there excepted to the said ruling of the Court.

579 Mr. Merrill said he is an insane or crazy person. I corrected him
and said, "he is not insane, he is merely simple and lost his powers of

mind;" Mr. Tourtellote said it amounted to the same thing; I said it was
580 different in my opinion, and protested against it being done, and so he
said, "Very well," and I thought he complied with my suggestion. I
said to Mr. Tourtellote that I thought it would prejudice justice in the
581 trial of William Hopps if Ralph was insane; I said it could be ar-
ranged as Mr. Merrill wished. I was present at the trial of Ralph's
case. I think Mr. McComas was there. I have known Ralph about
582 twenty-three years; he was not always foolish. The language I used
to Mr. Merrill and Mr. Tourtellote was merely advisory; I had noth-
ing to do with it; we went to the jail to see William Hopps; it was all
new to him. He said there was a morsel of right in the case; that
583 there was \$500 or \$600 of Ralph's money that he had used, which was
sent from England. All the part Mr. McComas took at Ralph's trial
584 was to object to Mr. Merrill as conservator. The history of Ralph
was gone into before the jury by his friends and acquaintances.

The People called Jonas Johnson, who testified in substance as
follows:

585 I keep the Farmer's Hotel in Chicago; have furnished Hopps ten
gallons of beer since he has been in jail; put whiskey in three times; a
pint two of the times; it was Lill's XXX ale.

The People called William Hopps, jr., who testified in substance
as follows:

588 I was there when mother was stabbed; father threw the knife
away; he threw it out in the yard and went back into the house; he
589 was standing on the walk and threw it down one side; my mother was
590 stabbed in the house; my father has had that knife since last winter.

The People called Thomas Fullager, who testified in substance as
follows:

I have known Hopps twenty-five or twenty-six years; live a mile
west. In July, five or six years ago, I went at Mr. Thornton's request
to see Hopps about abusing his wife. He told me to go home and
591 mind my own business; that he should manage his wife as he had
hitherto done. I asked his wife if he abused her, and she said I have
asked him many times what it was for, and I ask him again now for
592 I never gave him a cross word or look in my life; he made no reply.
I told his wife that if he abused her again I would have him taken
care of. I said to him that he might kill her and then he would be
593 hung. Hopps made no reply to all this, except that I wanted to part
man and wife. About the third morning after that he met me and said

594 he thought I came with a friendly intention, and that he had not
abused his wife since. I told him that if he did not abuse his wife up
to Christmas I would shake hands with him. He said she was one of
595 the best women, and when I asked him why he abused her, he said it
is drink. Sometimes in the morning he would hardly speak; in the
middle of the day he is lively, and at night very lively; otherwise I
never saw anything different in him from other men.

The people recalled Benjamin C. Luce, who testified in substance
as follows:

596 In jail I asked Hopps if it was true that he had agreed to pay
counsel \$2000. He said he had not agreed upon any sum, but said
what is \$2000 compared with a man's life; said he could soon make it
if he could get back on the farm; said he would not have any counsel
597 unless it was the best he could get; he spoke of Van Arman and Mc-
Comas, and asked my advice. I think Hopps was married in 1839;
his wife's name was Smith; they were of Scotch descent. Once I
went to Hopps' house and heard loud talk before I went in from some
one; when I got in it was all pleasant.

The people called Gustavus Fischer, who testified in substance as
follows:

598 I have been Deputy Sheriff for two years. I took Hopps from
jail back to Wheeling to attend the inquest; I started from jail about
599 nine in the evening; we had to stop for Wells street bridge, and he
asked if there was a place to get anything to drink; I said no. After
we got in the cars he asked who the attorneys had been for Jumpertz.
I told him Van Arman and McComas. He asked me if they were good
criminal lawyers. I said they had the reputation of being the best.
600 When we got to the station we went to a saloon and took a glass of ale.
After we got where the inquest was he lay down on a lounge and fell
asleep; after a short time the Coroner asked him step to into the bed-
room, and asked him if that was his wife; he said yes. After the jury
601 retired he went into the buttry, filled a glass from a jug, and drank it;
602 it was liquor, I think he filled the tumbler. William Hopps was sworn
before the Coroner. He said something about jealousy being the
cause of killing his wife, though I don't remember what was said on
that subject. The Coroner asked whether he committed the act; he
said he did, and that was the knife with which he did it, and jealousy
was the cause. He rode back with me, behaved like a gentleman,
603 seemed to be sober, but worn out. We got there at eleven or twelve
at night, and started back the same morning at three.

The people called John S. Everett, who testified in substance as follows :

I am acquainted with the hand-writing of W. H. Davis. The paper shown me is his hand-writing.

The people called Mrs. McNabb, daughter of defendant, who testified in substance as follows :

The paper shown me is my father's hand-writing.

The people called Abel Smith, who testified in substance as follows :

604 I am related to William Hopps' wife ; I saw the paper shown me in the possession of Mrs. Hopps about the time of its date.

The people called Michael Hopps, who testified in substance as follows :

605 I am a cousin of the defendant ; have known him eight and a half years ; I came from England in 1854 ; I knew all his relatives that I ever heard of ; I never heard of such a thing as insanity in the family ; I lived some two or three months in defendant's house, and for two years close by ; I never saw him abuse her except when in liquor ; he would pull her about pretty rough ; I have known him to strike her a good many times ; his blows left marks on her a good many times ; I wrote to her father ; that was when he was making great professions of reformation ; he said if he could only get her back he would never abuse her again ; I believe he laid the blame to drink, and said he was going to leave off drinking ; I think Mr. Hopps once made profession of seeking religion ; I think he told me so ; I never saw anything peculiar or singular as to his state of mind ; I never heard anything about defendant's mother ; I knew Ralph was simple-minded this last ten or fifteen years. William would abuse his wife at all times, day or night, and keep it up for two or three days ; he kept liquor in his house and drank every day more or less ; I have seen him when he was abusing his wife go about his ordinary business, attend to all other relations, and treat everybody else very properly ; on these occasions she exhibited all the forbearance and mildness a woman could ; the most I could hear her say was, " Don't William, you hurt me," and advise him to take medicine ; he was bilious sometimes, and she would frequently advise him to take calomel, a thing which he took a great deal of ; he took very strong doses of calomel, more than I should like to take, and more than a dose for an ordinary man.

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The People called Conrad Foltz, who testified in substance as follows:

611 I am turnkey of the jail; was also in July and August, 1862; Mr.
Van Arman came there about three or four weeks after Hopps was put
612 in; he only came two or three times, and then, I understood, went to
the army. McComas came about two weeks after Van Arman's first
613 visit, and continued to come about once a week; Mr. Van Arman was
never there after he and McComas came together; McComas never
saw Hopps only in the public hall, except when the doctors came, and
then he wanted to see Mr. Hopps in the hall; I told him it was against
the rules.

The People called Elizabeth Hopps, who testified in substance as follows:

615 I am a daughter of the defendant; father had trouble with Merrill
about a horse, and told mother Merrill was intending to sue him for the
horse, and said, "Let him do it, and see how much he can get by it;"
616 she told him he had better settle it, and he was displeased. Before
Fullager came there father and he were friendly; after that he used
617 sometimes to call him names; called him "an old dough-gun;" he was
also unfriendly towards Merrill and Mitchell. The first time I ever
618 saw father strike her was about ten years ago; it was after the horse
matter; it was in the evening, in the summer time; I was up stairs;
heard father hallooing, swearing, and talking, and came down; he had
her by the hair, and knocked her head against the wall; he struck her
619 several times, and, when we tried to stop him, told us to go away; he
scolded her awhile, and then went to bed; he had liquor in the house,
620 and had been drinking hard that day; during his beating I remember
his saying she had turned against him and was mean to him; he was
worse that time than any time I remember. We have known of her
621 leaving the house in the night time. I have heard him say he never
did anything wrong in his life, and she did; that she was mean to him.
She had to black his boots, and he was overbearing to her, and told
622 her he had taken her from the wash tub, and made her what she was.
When she had marks from his blows she would stay at home; once she
had a black eye, and her aunt was sick, and she urged him to take her
623 to Paw Paw Grove; he did so, afterwards reproached her for wanting
to go when she was in such a condition. Once, when Mr. Winchell
624 brought mother back, father went out to meet her and brought her in;
they had come from Chicago that day; they came in our carriage; Pa
625 sent the carriage down that morning; mother was very mild and amia-
ble. Father was troubled some with the dyspepsia; used to say he
626 had the dyspepsia and heart-burn, and come in and get some soda;
I have heard mother tell him that she thought he required some kind
627 of medicine; she thought he was bilious. He was quick tempered;
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629 before he struck her, ten years ago, he had not been cross to her. I heard him talk to her about applying for a divorce; he said he thought it was mean for her to do so; he seemed to be displeased about it.

The People called A. D. Partridge, who testified in substance as follows:

630 I have known defendant twenty-four years; I married his sister;
631 I never knew of any insanity in the family until Ralph had a little time;
I did not see Ralph for sometime, for it was supposed he was insane,
or said he was insane; I supposed this time of insanity was a spell of
love-sickness; he had no affairs of the heart or love to my knowledge;
632 I have not seen him for eleven years. I never saw anything peculiar
in William Hopps; I have not seen William for nearly eleven years.
I saw Ralph in 1851, and he acted queer; we could not get any con-
versation out of him.

The People re-called Mary Hopps, who testified in substance as follows:

634 I remember the German who worked at my father's five days; his
name was John; he came there at night and said, "Work, work;" I
sent him in to father, but did not hear what they said; the next he and
635 father had a real spree; they drank about every fifteen minutes, and
636 were both quite intoxicated. When Miss Thornton was at our house
father abused mother for compelling him to take her to grandfather's with
637 a black eye. Miss Thornton said she was sorry to see him act so. He
said he was sorry too, but she compelled him to do it. He thought
Miss Thornton had been telling of it, and he scolded me for letting her
638 come when she had tried to injure his character; he seemed angry at
her afterwards.

The People called Hannah Thornton, who testified in substance as follows:

641 I did some sewing at Hopps five years ago. I was there four
weeks. Mr. Hopps came home one day and commenced abusing his
wife. She got up and left the room; he called to her and said, "Mar-
642 tha, come back, why do you run from my presence?" She said, I
don't run from you, I went into the room to finish my hair. He then
went into the buttry and took a glass of whiskey; he came back and
commenced abusing her, and struck her; he set his chair by her and
took another drink of whiskey, and then asked her, ' why she should
shun his presence, when he wanted to talk to her on a subject of so much
importance, where she had disgraced him so," and he called her several
643 pretty hard names. He called her a damned bitch and a whore. He

then struck her again pretty hard, and I arose and spoke to him for it, and told him I was sorry to see any such thing; and he said he would rather have given \$500 than for me to see any such thing; that she compelled him to do it. While he was going on in this way I looked out the window and said, a gentleman is coming; he then looked out and saw some one and quieted down in a second; went to the door; met the gentleman very politely and brought him in. The gentleman asked, "Have you any butter for sale?" and he turned to his wife and said, "My dear, have you?" She said they had. They then went down into the cellar and brought up the butter. The gentleman took the butter, and paid Mr. Hopps fifty dollars for it. He handed the money over to his wife, and said, "here, she is my keeper." Hopps went into the buttry and took another drink, and then commenced to abuse his wife again; he took a tumbler nearly full; sat down by the stove and hardly taken his seat before he jumped up saying, "Martha, I cannot stand it, I cannot endure it." She went out and he followed her into the wood shed; she did not come back for near an hour, but went to the barn; I could hear them clear to the barn. I was alarmed, and tried to get the men to go to them; it was near dark when she came in. He went into the buttry again; I did not see him drink, but presume he did. He then said to her, "We must go into the parlor and have this settled." I told her to prevail upon him to tell her what she had done. She asked him, and he says, "Martha, you know you damned bitch you," and he says you know the disgrace. You made me carry you to your father's, and she said, "it was not my fault, was it," and he says, yes it was, and he talked upon that until they went into the parlor; he kept going on the same way until two o'clock in the morning; he came out of the parlor and took his jug of whiskey in with him. She says you know that eye was not my doings, you caused it, and he said your conduct compelled me to do it. Sometime afterwards Hopps came into his brother's where I was, and went out again when he saw me, and talked to them about allowing me to be there after I had tried to injure him. This may have been two weeks after he struck his wife. Some one told him that I told the story around, and he did not speak to me. Wheeling has been my residence for fourteen or fifteen years. I never saw anything not perfectly kind in Hopps, only when he had been drinking. I never saw him abuse his wife but that once.

The people called Mrs. Jane McNab, who testified in substance as follows :

I am the oldest daughter of the defendant. I knew about the horse difficulty with Merrill. I never knew father to strike mother before that. Father and Mr. Merrill agreed that each should pick one man, and they two pick another, and the three decide it. Mother said she thought that was the best thing; after that, Mr. Merrill sued

father, and mother said he had better go and see Merrill, than to go to
 law about it; he did not seem willing to do it, although he sent the
 sheriff or constable to see Mr. Merrill, and try and settle it. It was ten
 651 years last summer since I first saw him strike her; it was under the
 tree in front of the house; he had been staying in the house all day
 and drinking pretty hard; she had been washing; he struck her in the
 face once and then kept on talking. Some nine or ten years ago, we
 652 had all gone to bed, and I saw him choking her; we ran down, and he
 had her by the hair and was knocking her head against the wall; she
 was faint, and got to the front door and sat down in a chair; he had
 653 been drinking that day; the next day her head was covered with bunch-
 es. Eight years ago he struck her with his fists and she fell down; he
 654 had been drinking, and it commenced as usual. She did not leave
 him until five years last summer; just before that he had been drinking
 655 very hard and was very abusive and struck her; I have seen him kick
 her. She has gone out of doors sometimes and stayed the better part
 656 of the night; when she left home she stayed about a week; she left
 four times; the last time she was gone over three months; that was in
 657 1858; I should think it was more than a week after her return before
 he commenced abusing her; when he commenced to drink he did not
 658 abuse her so much, but the more he drank the more he beat her; it
 659 grew upon him as he drank. Once he pretended that he did not drink,
 but we measured the demijohn and found there was a pint less in it than
 the day before. He said Mary drank it, then Lizzie, and stuck to it.
 660 He always commenced to appear cross as soon as he began drinking;
 sometimes cross to others. Several years ago he used to say I had
 turned against him; sometimes this was when I was trying to still him,
 and at other times when I would not be saying anything at all. I
 661 never knew him to strike or threaten her when sober. Before mother
 came back he said it could not be that she did intend to go through
 with it and get a divorce, that she had only applied for it to frighten
 him and make him treat her better, and when she came back he asked
 her if she intended to get one, and she said she did, and he said it
 would bring a severe disgrace upon him, and he did not want her to do
 662 it. He never liked Mr. Merrill very well, and never spoke well of Ful-
 lager after he came and talked with him, and he disliked Winchell worse
 than any other man; said he was a damned old rascal and had threat-
 663 ened to enter a complaint at the Lodge. Father's natural disposition
 was overbearing; he often said that no one could control him, that he
 would not submit to God Almighty himself; he used to say that liquor
 664 was the cause of the disturbance; it was ten years ago this last sum-
 mer since father first struck her; twelve or fifteen years ago he had the
 665 bilious fever; he used to have the heart-burn; he used to say his liver
 was affected, and took a good deal of calomel, but not of late years; it
 used to make his mouth sore and teeth loose, and then he stopped ta-
 king it. When mother was sick, in child birth, father nursed her and
 667 drew her breasts. Once, several years ago, he quit drinking and did

not drink for some weeks. During the last five years he would abstain
668 some times several weeks and sometimes a few days; during those
times he was kind to her; when he began to drink he would be cross;
if he drank often he would get worse; occasionally he was not violent
669 when he drank; he always had spells of hard drinking; mother was
always kind to him; they seldom talked about the trouble; sometimes
670 after the influence of liquor had left him he would be kind, and at other
times just as bad as if the effects of liquor was going on. After he
had drank a great deal his eyes would look dull and sleepy, but it would
take a great quantity to make him appear in that way. He has beaten
672 mother a great many times in the last ten years; I could not tell how
many; I have known him to go on so three or four days at a time, and
673 sometimes during the night and part of the next day. When mother
was absent he always spoke of her kindly, and when not in liquor ap-
peared to regard her with affection; I do not think there was any pre-
tence about him.

The People here introduced the following letter from Milo Win-
chell to Mrs. Hopps:

NORTHFIELD, May 4th, 1858.

673 MRS. HOPPS—Mr. Hopps has requested me two or three times and
urged me very strongly to write to you. He seems very anxious that
you should come back, and of course makes all the fair promises possi-
ble, but you of course know as well as I what they are worth. I
would not presume to advise you one way or the other. You know as
well or better than I do what those promises are worth; but there is
674 one thing I would say to you: if you should come back, and he should
commence his abuse again, that you will stay and have him taken care
of.
MILO WINCHELL.

The People introduced the following letter from Drummond &
Davis:

CHICAGO, 6th May, 1858.

R. SMITH, *Esg.*, Paw Paw Grove:

DEAR SIR—Yours of April 24th received and contents noted.
In regard to Hopps vs. Hopps for divorce; bill has been drawn some
time and filed, but did not issue process, at the suggestion of Mr.
Hopps, as stated in our last to you, he then believing matters in regard
to his future conduct could be arranged. On your request to us to im-
mediately proceed was attended to and set for June term, and your
last, requesting us to defer the application, was very cheerfully done,

and must now stand over until September term, believing as a friend to both parties that a separation should be avoided if possible. I have not seen Hopps since I received your last.

Respectfully, yours, &c.,

DRUMMOND & DAVIS,

Attorneys, Chicago.

The rebutting testimony in behalf of the People here closed.

Rebutting Testimony for the Defence.

The Defendant called Edward Martin, who testified in substance as follows :

675 I know the prisoner at bar. A short time before I heard of this
homicide, I met Mr. Hopps on Randolph street; I think it was near the
Sherman House; I cannot state precisely the time; a week, or two
weeks, a short time before; he was walking with his arms stretched
out, and he says to me, "How do you do? will you take a drink?"
and then he walked on and took no further notice of me. I had known
Hopps for several years, and the occurrence took me as very strange.
676 I don't think I ever took a drink with him before that time. I did not
think from what I saw that he had been drinking. My attention was
not called to that subject.

The Defence called James B. Bradwell, who testified in substance as follows :

677 When Mr. Van Arman was in jail to see Hopps I went with him
and came with him, and we were both together when talking with
Hopps. No plan or suggestion was made in regard to having Hopp's
brother declared insane; I don't recollect that Ralph's name was men-
tioned.

The Defence called Dr. Henry Wing, who testified in substance as follows :

678 There was no appearance of liquor about Mr. Hopp's at any of
the times I examined him. Unless a person was laboring under the
influence of very decided disease of the brain it could not be possible
that he could be at the same time under the influence of liquor, and

679 have the small soft nervous pulse which he had when I examined him. The effects of stimulants is to increase the force and fulness of the pulse when the subject is in ordinary health ; the increase of speed and frequency is not so marked. It makes a full high pulse, and his was very soft and small. Take a pulse which is feeble, and a heart which is feeble and administer alcohol—by increasing the force of the pulse it would diminish its frequency. The ordinary law would be changed in that respect, and the tendency of liquor would be to equalize that relation between pulsation and respiration, which I before stated was very much disturbed. My attention to it was not drawn to whether he was under the influence of liquor at the time, but in putting my ear to his chest, examining his abdomen and pulse, my impression is, I could hardly have failed to know it if he had had any liquor.

The Defence called Dr. Andrew McFarlane, who testified in substance as follows :

680 I have heard all the testimony given in this case since I was last examined, and heard nothing in the testimony inconsistent with the opinions I advanced when on the stand. My opinion is the same. I think by the testimony presented, I am better able than I was before to arrive at the history of the case. I see the commencement of it better than I did ; the causes which have led to it, and the manner in which the disease was developed. Those facts did not appear so well in the former testimony as in that last offered.

The Defence called Dr. Ernst Schmidt, who testified in substance as follows :

682 I am a physician ; was connected with Insane Asylums four years
683 in Germany ; I have examined the prisoner, but the short time I spent
684 with him is not sufficient to give an opinion upon. I had a conversation
685 with him of about an hour, and it is my opinion that he is insane
in some degree. He is wandering and goes from one thing to another ;
the reason he gives bears no proportion to the fact. If a man kills his
wife in such a cruel manner as Mr. Hopps did, there is for a physician
something about that, there is not the proportion between the act itself
and that reason. I asked him if he had any proof against his wife ; he
made me a talk of about half an hour, and he did not give me one single
fact ; and so it is fiction, and it seems his mind is deranged. It
seems that he drank some, but it is very possible that drink is the effect
of insanity ; it is so in some cases. When I saw him at the jail I could
not see that he had drink at that time. His heart and pulse are not
quite healthy ; he has some enlargement, which would affect his circu-

687 lation; if a disease of the valves of the heart it would make the pulsations softer and weaker.

CONCLUSION OF THE EVIDENCE.

688 And therefore, this being all the evidence given to the jury, in said cause or prosecution, and the counsel for the people and the prisoner having argued the case before the jury, the following instructions were asked for on behalf of the people, as follows :

1. Murder is defined by the laws of the State to be the unlawful killing of a human being, in the peace of the people, with malice aforethought, either expressed or implied.

2. Malice shall be implied, when no considerable provocation appears, or when all the circumstances of the killing show an abandoned or malignant heart.

689 3. The jury are instructed that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be found to their satisfaction; and the jury are further instructed that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act charged in the indictment in this case, the defendant was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that the use of the instrument described in the indictment upon the person therein described in the manner therein alleged was wrong.

4. Insanity, produced immediately by intoxication, does not destroy the responsibility of the defendant, if the jury believe from the evidence that the defendant, when sane and responsible, made himself voluntarily intoxicated.

5. If the jury believe from the evidence that the defendant, when free from the influences of intoxicating drinks was uniformly sane and rational, and forbore all violence towards his wife, and that for a series of years, prior to the commission of the act in question in this cause, the defendant, when in fits of intoxication, was accustomed to use violence upon her and knew that such violence was the immediate result of such intoxication, and that, having such knowledge, he voluntarily made himself intoxicated on the day of committing the act of stabbing

690 his wife, with the instrument charged in the indictment, and that such act was the immediate result of such intoxication, then the defendant is responsible for the crime, although he might have been laboring under some insane delusion at the time.

The Court then gave to the jury, upon its own motion and as in behalf of the people, the following instructions :

Given. A crime is defined as a violation of a public law, in the commission of which there shall be an union of act and intention, or criminal negligence. Intention is manifested by the circumstances surrounding the act, indicating its motives or object, and the sound mind and discretion of the accused. A person shall be considered of sound mind, who is neither an idiot nor a lunatic, nor affected with insanity, who has a knowledge and consciousness of the distinction between good and evil. In this case the homicide is admitted, but the accused alleges that at the time of the commission of the act his mind was so affected with insanity that his moral sense and will were subjected by it, and he was oblivious to the moral quality of the act. The law presumes the sanity of every person charged with a criminal act, and that such act is the result of volition and will, influenced by motives acting upon the mind. 691 Hence, the burden of overcoming this presumption rests upon the accused; but when insanity is satisfactorily shown, it is the duty of the jury to acquit, as in such case there is an absence of intention, which is essential to a criminal act.

Given. Insanity is generally classified into moral and intellectual, and is either general or partial. Moral insanity consists in a disorder of the moral affections and propensities, without any symptom of delusion or error impressed upon the understanding. Intellectual insanity, on the contrary, is a disorder of the intellect and is characterized by delusion or hallucination of mind, manifesting itself either in the belief of things naturally impossible, or of facts so improbable when considered in connection with the evidence upon which the belief is formed, that no person in his senses could believe them.

692 But these general definitions do not afford to an unprofessional mind a sufficiently clear and comprehensive idea of insanity thus classified and defined, to enable it to apprehend those distinctions of science and law, which are necessary to a formation of a judgment in this case. And it is the duty of the court, where such tremendous issues are involved as here, that these distinctions should be marked and defined with the utmost care and exactness.

Given. The mind in its more general sense indulges not only the powers of the understanding, as perception, reflection, imagination, memory, will and judgement, but also the moral sense or conscience, the disposition, propensities, affections and passions. The passions, inclinations, and propensities indicate the state or impulses of the mind, and constitute what are termed the moral power, as contradistinguished from the

693 intellectual. The action of the intellect can only manifest itself to the observation of others through the action or conduct of the individual. All actions proceed from the passions or from motives acting upon the mind, and influencing the judgment and will. We judge of the character of a man by his conduct, and as that is regulated by good or evil impulses, we determine the moral constitution of his mind. When, therefore, we speak of the moral powers, we are understood to refer to the propensities, dispositions, or temper of the mind, whilst on the other hand, when we refer to the intellectual powers, we refer to the faculties of judgment, will and conscience.

Given. Thus constituted man is regarded by law as a free moral agent, endowed with the power of volition or choice among different motives presented to the mind, and of determining whether his conduct shall be good or evil. It also assumes that every man has the power of determining whether an act is right or wrong, and it is upon the existence of this moral sense and freedom of will that all law, human and divine, bases its authority, and its sanctions. If a man were obliged to do exactly what he does, if in other words he has not liberty of choice between good and evil, and his judgment and will must yield to any motive, impulse or passion, acting upon it, then the whole system of criminal jurisprudence is founded upon an error, both fundamental and ineradicable. 694 Free moral agency implies the entire subordination of the passions and propensities or moral powers to the will, and the power of the will to control them, and assumes that all the outward acts and conduct are directed or suffered by the will, and hence that they are voluntary. On this principle society in all its relations reposes. It is applied without regard to the moral training of the individual in youth, or to irritability of disposition arising from disease, or from temper or passions habitually indulged. However perverted the moral sense, or strong and uncontrollable the passions, the individual is nevertheless presumed to be possessed of a sense of right and wrong, and the power to control the will and to act from choice, and this presumption cannot be rebutted by any evidence, which falls short of proof of insanity.

We may now perceive more clearly what is meant by insanity both mental and moral. And first, of intellectual insanity :

Given. The characteristic mark of this affection or disorder of the intellect, is delusion or hallucination, and is either general or partial. In general mania, the hallucination extends to all kinds of objects and subjects, and generally manifests itself in frenzy or raving madness. In monomania or partial insanity, the hallucination is confined to a single object or a small number of objects. This is the species with which we have here to do. Its true legal characteristic is delusion, or that state of the mind, which is indicated by a belief in something in itself morally impossible ; as that trees walk, statues nod: or in the belief of a state of facts in their nature morally possible, but of which there is an entire absence of all reasonable grounds of belief. It also sometimes

manifests itself in a belief of a direct revelation, and a controlling and irresistible sense of obligation to obey the revealed will.

Given. This state of the intellect indicates the existence of a disease, which, in its effect, subjects the will, judgment and conscience to the imagination with respect to the subject of the insane belief. The influences of such belief or delusion over the mind is much greater than 696 the power of any conviction or belief in the mind of a sane person, and directs and controls the will, judgment and moral sense with inconceivably greater force. The individual thus affected may be able, in most other respects, to reason correctly on any subject beyond the range of his hallucination, and be not unfitted for the intelligent care and oversight of his business. Nor is the power of judgment or reasoning disturbed in any perceptible degree, even with respect to the subject of the delusion, and his conduct and reasoning are as logical and rational with respect to it as if the facts constituting the delusion were real and not imaginary.

The law as well as medical science recognize all these forms of mental insanity, and has certain established principles applicable to the subject.

Given. For obvious reasons a higher degree of insanity must be shown to absolve a party from the consequences of criminal acts than to discharge him from the obligation of his contracts.

697 A man is not to be excused from responsibility if he has capacity and reason sufficient to distinguish between right and wrong as to the particular act he is then doing—a knowledge and consciousness that the act is wrong and criminal. But in these cases it is not deemed sufficient that the individual has a general knowledge that the act is wrong in its nature, because this general knowledge may well consist with delusion as to the moral quality of the act, when considered in reference to the person and to the circumstances believed to exist, and which in themselves constitute delusion or insanity. There may be an insane delusion with respect to one's moral duty under such circumstances, as well as in the belief of facts, which is the primary evidence of unsoundness of mind. From whatever cause the power of the will and conscience may be subjected or perverted by an insane affection, self agency ceases, and acts done under the influence thereof are neither criminal nor punishable, because they are not considered voluntary. Given. For this reason the law will excuse homicide on the ground of partial insanity, in the following cases:

Given. *First*—Where the accused takes life under circumstances, when the act would be excusable if the facts constituting the delusion had an actual existence, and were not mere hallucination—as in defence of life or habitation.

698 *Second*—Where the act is done under a delusive belief of a divine
Given. command and overruling necessity, or under a controlling sense of
moral duty, by which the understanding and conscience are deluded,
with respect to the moral quality of the act.

Given. *Third*—When the delusion is only that a wrong has been done
him in a matter which, if true, would not excuse homicide, yet at the
time of the commission of the act, his mind is so affected by the dis-
ease, as to incapacitate him from knowing that he is doing wrong, and
he is unconscious of wrong. But when this knowledge exists at the
time, the accused cannot be acquitted on this ground, as in such case
the act will be treated as one of revenge.

Given. Secondly, of moral insanity as defined by those medical writers
who treat of this disease, it consists in the existence of some of the
natural-inclinations, dispositions or propensities in such violence, that
it is impossible not to yield to them. It is attended with no delusion
or disorder of the intellectual faculties in any notable degree, and the
mind is conscious of right and wrong while under its influence. And
699 yet, notwithstanding this consciousness, the mere violence of the incli-
nation to commit the act is so great as to overthrow all the power of
resistance which the mind may be able to oppose to it; under its influ-
ence, the individual ceases to be a moral agent. When manifesting
itself in the homicidal form the inclination and desire to kill is often in-
discriminate in its violence, sometimes directing itself against the lives
of persons indifferent to the accused as well as against objects of af-
fection and friendship, and it is impossible for him to restrain the un-
controllable fierceness of the impulse or desire. The act is never influ-
enced by revenge or any of the passions, or a desire to gain temporal
advantages from the homicide. It is said to overcome the power of self-
control, and to act without motive of any kind, and frequently without
premeditation, and consists in the mere violence of the propensity, or
disposition by which the will is overcome.

700 Most certainly if this form of insanity has any existence, the doc-
Given. trine of free agency can have no application to one affected with it. It
is at least of exceedingly rare occurrence, and its manifestations as it
has been observed bear striking resemblance to crime. Nevertheless it
is recognized by the medical profession, though it has been rejected by
the English courts of justice, as apocryphal, and has been doubted,
by some courts of very high authority in this country. And what is
of more consequence to us, it is impliedly recognized by our own. It
is true, it was not adopted by our own court in the case referred to
(Fisher vs. People, 23, Ills.) upon some consideration, yet it must be
regarded as the law for the purposes of this trial. But in saying this,
it is my duty to add, that it was regarded as so perilous in the adminis-
tration of criminal justice, by the court which first promulgated it, as a
principle of legal science, as to induce the observation, "That the doc-

trine which acknowledges this mania is dangerous in its relations, and can be recognized only in the plainest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance," or from its circumstances to bear unmistakable marks of destructive, and uncontrollable impulse. "Where this affection,"

701 says Dr. Ray, whose authority is the chief support of this opinion, is "alleged in excuse for crime it must be proved, First, that it was really present; Second, that it had arrived to that stage in which its impulses are irresistible; Thirdly, it should be the exclusive cause of the criminal act." Governed by these rules there can be but little difficulty in determining the presence, or absence, of this disorder, as the cause of the criminal act. It may be said that there can be no reliable case of moral insanity, when any strong motive or passion, or other exciting and adequate motive is found in the evidence. Hence when the criminal act can be traced to a desire of gain, or to hatred, revenge, jealousy or any strong passion excited by drunkenness, the act must be ascribed to such motive or impulse, and not to that irresistible impulse which is said to constitute the distinguishing characteristic of this disease.

Given. In applying the principles of the law of insanity as thus defined, to the particular circumstances of this case. The Court instructs the jury, on the part of the people, and their behalf, that if they believe from the evidence

702 *First*—That the mind of the accused was affected with insanity only while in a state of drunkenness, and that with a knowledge of this predisposition, and of right and wrong, the accused voluntarily put himself in that state and committed the act with which he is charged, the act in that case is criminal in the same degree, as if there had been no predisposition to insanity when under the influence of drunkenness.

Given. *Second*—That even though the jury should find that the accused was affected with insanity by reason of a delusion, in regard to wife's fidelity, yet if they further find that at the time he committed the act he had a perfect knowledge of right and wrong with regard to the act itself, and was under no delusion with respect to its moral quality, then the law regards him as a moral agent in the commission of the crime and subject to its penalty.

Given. *Third*—That insanity produced immediately by intoxication does not destroy the responsibility of the defendant, if the jury believe from the evidence that the defendant, when sane and responsible, made himself voluntarily intoxicated.

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Given. *Fourth*—That if the jury believe from the evidence that the accused when free from the influences of intoxicating drinks, was uniformly

sane and rational and forbore a'l violence towards his wife ; and that for a series of years prior to the commission of the act in question, he was accustomed, in fits of intoxication, to use violence upon her, and knew that such violence was the immediate result of such intoxication, and that having such knowledge, he voluntarily made himself intoxicated, on the day of committing the act, and that such act was the immediate result of such intoxication, then the defendant is responsible for the crime, although he might have been laboring under some insane delusion at the time.

Given. *Fifth*—That if the act was done by the accused, under the influence of passion, excited by drunkenness or jealousy, or hatred, without provocation on the part of the deceased, or any danger to life or limb, 704 that in that case the accused is not entitled to be excused from the consequences of the act, on the ground of moral insanity, however strong or irresponsible the passion may have been under which the act was perpetrated.

Given. *Sixth*—That if the jury find that the accused was actuated by malice, jealousy, or other feeling of hatred, or from passions excited by drunkenness at the time of the killing, then he is guilty of the crime of murder, though the jury may find that he was affected with an insane delusion with respect to his wife's chastity.

To all and each of which instructions the prisoner's counsel then and there objected, which objection was by the Court overruled, and the prisoner's counsel then and there excepted to such ruling. And thereupon the prisoner, by his counsel, asked the Court to give the following instructions to the jury :

INSTRUCTIONS FOR THE DEFENCE.

Given in *First*—That after legal insanity is once proved to exist prior to another. the act of killing, the burden of the proof is then upon the prosecution to show that the act was committed in a lucid interval.

Given in *Second*—That if the jury believe from the evidence that the prisoner at or before the killing was laboring under an insane delusion in another. regard to his wife's infidelity, and that, moved by the promptings of 705 that insane delusion, he killed his wife, then they should acquit him.

Given in *Third*—That if the jury can reconcile the facts and evidence substance. tending to show drunkenness in the case, with any theory of innocence, such as insanity or any other theory, it is their duty to do so and exclude the theory of drunkenness from the case.

Given in substance. *Fourth*—If the jury can reconcile the facts and evidence tending to show drunkenness in the case with any theory of innocence, it is their duty to do so and exclude the theory of drunkenness from the case.

Given in substance. *Fifth*—That if the jury believe from the evidence that the prisoner killed his wife by reason of an insane and diseased mind, and that he would not have killed her but for such insanity, then they must acquit the prisoner.

Sixth—That if the jury believe from the evidence that at the time of killing the prisoner was laboring under such a state of mental disease or insanity as not to comprehend the true moral quality of the act he did, in relation to its being right or wrong, then they should acquit the prisoner.

Given in substance. 706 *Seventh*—That if the jury believe from the evidence that the prisoner at the time of the killing was subject to and laboring under the disease of insanity to such an extent that it overbore his reason, conscience, and understanding, in relation to the act he did, that then they should acquit.

Given in substance in another *Eighth*—That if the jury believe from the evidence that the prisoner at the time of the killing was insane, and laboring under a fixed and insane delusion as to his wife's infidelity and want of virtue, and that such insane delusion operated so powerfully upon his reason, understanding, and will, as to render him incapable of perceiving, or being guided, by the ordinary principles of right and wrong in relation to the act he did, that then they should acquit the prisoner.

Given in another. *Ninth*—That if the jury believe from the evidence, that the prisoner at the time of the killing, was insane, and laboring under a fixed and insane delusion, as to his wife's infidelity and want of virtue, and that such insane delusion operated so powerfully upon his reason, understanding and will, as to completely master and overthrow the power of the prisoner in doing the deed charged, that then they should acquit him.

Refused. 707 *Tenth*—That if the jury believe from the evidence that the prisoner, at the time of the killing was insane, and laboring under a fixed and insane delusion, as to his wife's infidelity and want of virtue, and that such insane delusion operated so powerfully upon his reason, understanding and will, as to render him incapable of perceiving or being guided by the ordinary principles of right and wrong, in reference to the act he did, or so operated on his reason, understanding and will, as to so overthrow them that he was irresistably impelled to

It should have been the main cause of insanity.

the deed, that then it matters not what were causes which led to, created or excited the said insanity, and that they should acquit the prisoner.

Given in another. *Eleventh*—That if the jury believe from the evidence, that the prisoner was insane at the time of the killing, and was impelled to do the deed by an insane impulse beyond his power of controll, that then they should acquit.

Refused. *Twelfth*—That drinking ardent spirits is not unlawful, and that although the law does not excuse the acts of crime, merely because they were committed while the party is under intoxication, yet that insanity caused and stimulated either in whole or in part by liquor is as good a defense for alleged criminal action, as insanity caused by anything else.

Refused. *Thirteenth*—That if the prisoner had been for some time prior to the killing, laboring under insanity, and an insane delusion in regard to his wife's infidelity, which in law would render him irresponsible for the act of killing charged against him, and in fact did kill his wife under and by reason of his said insane delusions; that then the fact that the prisoner habitually, and even on that day, drank liquor which might have, or did, excite his said insanity and delusion, will not operate to destroy or overthrow the defence of insanity, but the jury should acquit the prisoner, notwithstanding such fact.

Given in substance in another. *Fourteenth*—That if the jury believe from the evidence, that the act of killing charged was the offspring and consequence of insanity, in the prisoner, and that he would not have committed the act at all, but for his insanity, they should acquit the prisoner.

Given in substance. *Fifteenth*—If the jury shall believe from the facts given in evidence, taken in connection with the opinions of the professional witnesses, that the accused had at the time of the alleged offence, been for a considerable time laboring under a monomania, attended by delusion, creating and indicating such a diseased state of the prisoner's mind, that the act of killing was but an outbreak or paroxysm of that disease, which for the time being, overwhelmed and suspended reason and judgment, then the accused was not an accountable agent, and the jury must acquit him.

Given in substance. *Sixteenth*—If the jury shall believe from the evidence that the respondent at the time of the alleged offence was laboring under a partial insanity, accompanied by that state of delusion the known tendency of which is to cause the mind suffering under it to break out into sudden paroxysms of violence, venting itself in homicide and other violent

710 acts towards friend or foe, and that the outbreak in this instance was of such a character that for the time being it must have overbore memory and reason, then the act of killing was the result of disease and not the act of a mind capable of choosing, and they must find the respondent not guilty.

Given in substance. *Seventeenth*—The jury will acquit the respondent if they shall believe from the evidence that the act of homicide was not the act of a person acted upon by motives, and governed by the will, but was the result of an uncontrollable impulse, and that that impulse was the outbreak of a diseased mind, for a long time previous laboring under a monomania, accompanied by delusion.

Given in another. *Eighteenth*—If the jury shall believe from the evidence that the accused, at the time of the act alleged, was in a diseased and unsound state of mind, that such disease existed in so high a degree that for the time it overwhelmed reason, conscience, and judgment, and that in committing the homicide he acted from an irresistible and uncontrollable impulse, then they will acquit the respondent.

Given in another in substance with proper qualifications. That the drunkenness which the law speaks of as not excusing crime is the drunkenness of a sane mind and does not refer to the drinking of a man who is already insane.

711 Given in substance. That if at the time of the killing charged, the prisoner was insane within the law and was laboring under an insane delusion whose probable tendency was to induce the prisoner to commit the homicide, and that under the influence and by reason of the said insane delusion he killed his wife, as charged, the prisoner should be acquitted, notwithstanding the prisoner may have or did drink liquor on the day of the killing.

But the Court refused to instruct the jury as asked by the prisoner's counsel in either instruction, but gave in lieu thereof the following instructions:

And the Court, on the part and behalf of the accused, further instructed the jury.

Given. *First*—That if they believe from the evidence that the accused was, at the time of the killing, not drunk but laboring under a fixed and insane delusion as to his wife's infidelity and want of virtue, and that such delusion operated so powerfully upon his understanding and will as to render him incapable of perceiving or being sensible of the moral quality of the act, or knowing and acting upon the principles of right and wrong in relation to the act, then such insanity entitles him to an acquittal, on the ground that he was not a free moral agent.

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Given. *Second*—That if they believe from the evidence that the act of killing was the offspring and consequence of insanity in the accused,

and not induced or stimulated by drunkenness, hatred or malice, and that such insanity was the offspring of delusion with respect to his wife's chastity, and so great as to overcome the will, and obliterate all consciousness of right and wrong with respect to the act, or induce a fixed and insane belief that its commission was one of duty, that the jury should acquit, although they may believe that the accused was capable of reasoning correctly and impressed with clear perceptions of right and wrong with respect to the act of killing in general.

Given. *Third*—That if they believe from the evidence, that the accused was laboring at the time of the alleged offense, under a partial insanity, the known tendency of which is, to impress the mind with the belief of facts which if true, would excuse homicide—as that it was necessary in defense of life, and overcame the reason and will, and that such insanity was not the direct effect of drunkenness, then the act of killing must be considered as the effect of disease, and not the act of a mind capable of volition and choice.

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Given. *Fourth*—That if they believe from the evidence, that the homicide committed by the prisoner was not the act of a man operated upon by motives and governed by the will, but the result of a mere uncontrollable impulse, communicated to his mind from insanity of the moral powers, and not by motives of hatred, jealousy or drunkenness, or other passion acting upon the mind, and impelling to the act, then the act was one of moral insanity. But in determining this question the jury should have reference to the more exact definition of moral insanity given in previous instructions on this subject.

Given. *Fifth*—That if they find from the evidence, that the accused was affected with insanity at the time of the killing, and that the mind was not affected with any passions caused by voluntary drunkenness, and was only impelled by insanity, then the defendant stands excused on the ground of insanity, and in determining this question, the jury should carefully consider the evidence bearing upon it.

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Given. *Sixth*—That if they find that he was affected with mental insanity, occasioned by past excesses of drunkenness, and was not under the influence of drunkenness at the time of the homicide, then the act is excusable on the ground of insanity. Where a man is insane he is not punishable as a murderer, although such insanity be remotely caused by undue indulgence in spirituous liquors. But it is otherwise if he is intoxicated at the time, and his insanity be directly caused by the immediate influence of liquor.

Given. *Seventh*—That if the jury are convinced from the evidence that the killing was the direct and immediate effect of an insane delusion

concerning his wife's want of chastity, so operating on and affecting his mind as to control the will and obscure all perceptions of right and wrong with respect to the act, and that such state of mind was not the effect of passions excited by ardent spirits, the act is excusable on the ground of insanity, though he may have been drinking. But the conviction of the mind should be clear and strong, and care should be taken not to confound passions excited by liquor with those which are the natural effects of insanity. For if insanity existed, but would not have manifested itself in homicide if it had not been stimulated by excitements caused by liquor, then the act is not excusable on the ground of insanity. But if the jury can reconcile the evidence tending to show drunkenness, with a conviction of mind drawn from the evidence that the act was one of insanity and not the effect of liquor, it is their duty to refer the act to insanity and acquit the prisoner on that ground.

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14 of brief
for authorities
to this question
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Given.

Eighth—That if the jury should find that the accused before the commission of the act was affected with insanity of a nature to obscure and overcome his moral perceptions with respect to the act committed, then the burden of proof is upon the prosecution to show that he was not affected with such insanity at the time of the killing.

Given.
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In conclusion the Court instructs the jury, that it is their duty to give a careful consideration to all the facts, and opinions in proof, throwing light upon the question of insanity, on this subject, medical opinions and evidence, are entitled to attentive and respectful consideration. And if the act is proved to the satisfaction of the jury by the weight and preponderance of evidence, to have been one of insanity only, the prisoner is entitled to an acquittal, though the defense should not be proved beyond all reasonable doubt.

To which refusal to give the instructions asked by the prisoner's counsel, and each of them, as also to the giving of those, and each of those, so substituted for them, the prisoner's counsel then and there objected, but such objection was overruled by the Court, and to such ruling of the prisoner's counsel then and there excepted.

And thereupon the jury retired to consider of their verdict, and, after being out some time, returned into court with the following verdict:

We, the jury, find the defendant guilty in manner and form as charged in the indictment. REUBEN TAYLOR, *Foreman*.

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Whereupon the prisoner's counsel moved the court to set aside the verdict, and award a new trial in the case, and filed the following motion and reasons:

1st. Because the verdict is contrary to law and evidence.

2d. Because the Court misinstructed the jury and refused to give instructions asked by the prisoner, which were law.

3d. Because the jury were permitted to separate improperly, (after they were sworn.)

4th. Because the jury were allowed to have improper communication with others.

718 5th. Because evidence was improperly allowed to be given to and withheld from the jury.

6th. Because evidence was given to the jury during the absence of some of their number.

7th. Because the jury were permitted improperly to separate in the custody of unsworn officers.

8th. Because some of the jurymen, not in charge of an officer, were separated from the rest.

9th. Because of newly discovered evidence.

10th. Because the instructions of the Court were calculated to confuse the jury.

11th. Because of the surprise, sickness and absence of one of the prisoner's counsel.

The defendant then filed in said cause certain affidavits, in substance as follows :

719 E. W. McComas says that soon after his engagement as counsel
and about September 1st, 1862, he met Dr. J. R. Gore, County Physi-
cian of Cook county, and requested him to observe and occasionally
720 examine the prisoner as to his mental condition, which said Gore prom-
ised to do, relying upon which, he felt it unnecessary to take further
steps in that behalf with other physicians until some time afterwards.
That said Gore subsequently went as a surgeon in the United States
army to the State of Tennessee, of which fact this affiant had no knowl-
edge until after he had left the State of Illinois and about the time of
this trial. That he at once wrote to said Gore to come on, or at least
send a sworn statement of what he knew about the case. That the first
he heard from said Gore was after this trial commenced. Nor did he
721 know until then what said Gore could testify to, and that the same is
important to the prisoner.

The defence also filed, together with the foregoing affidavit, the following letter from Dr. Gore:

IN CAMP, MEMPHIS, Tenn., Dec. 14, 1862.

722 E. W. McCOMAS, Esq.—*Dear Sir*: I returned to Memphis last evening with the 127th regiment after a march on foot of one hundred and twenty miles, out and return, and have since received two letters from you requesting my attendance, and that of Col. Van Arman, on the trial of Mr. Hopps on the 18th inst. I am sorry to inform you that the Colonel is very sick with pneumonia at one of our hotels, and we are under marching orders for the vicinity of Vicksburg. The time set for our embarkation by boat is 18th of the present month, consequently neither of us can comply with your wish and our own inclination to be at the trial. He requests me to tell you to get, if possible, the trial postponed. I join him in the request, and hope it may be done. You request me, if I cannot attend in person, to send you a statement of all I know of the case. This I find almost as impossible at the present moment as to attend in person. The many sick on hand and the hasty preparation for such a campaign as this promises to be down the river, so absorbs my mind that I cannot now recollect and detail all the incidents of my observation for the three months following the first of July when I think the inquest was held and my acquaintance with Hopps commenced. At that time I distinctly remember he said he wished all the facts to be known; confessed the deed and the knife with which he did it. He regretted the necessity for the deed, and said he had foreseen it several years and had tried to avoid the necessity. He had built a better house than he wanted, worked harder than any man, and furnished his house more expensively than he wished, to gain back the affections of his wife, which were always running after other men, but all he could do had no effect on her. He said any dispute or cross word from any person except her he could bear without resentment, but anything unkind from her enraged him beyond control. He said she was one of the best women in the world in every way but this, and this he found out from a man who drank a toast to him on the birth of his boy. The toast he related I do not recollect it, but it was some vulgar thing. This he believed an intimation, and then he noticed for himself and found it true. I rode with him I think nine miles that night in a wagon. He seemed as unconcerned and talked as freely on any subject as a man could do traveling on business matters; but sometimes would commence a history of some event and get on a different subject before finishing his story. I saw him pour out and drink from a jug before he left home, and he drank largely at a saloon of whisky. I think when we arrived at the depot I saw no evidences of intoxication. As to his pulse I never found them less than ninety to a minute during my acquaintance with him, and when inquired of as to his health he always said he was better; frequently said his affliction was great, but hoped he should be able to bear up under it, and

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felt as though the worst were passed through with. I do not mean that all the conversation was connected or at the inquest. I regard him as laboring under a delusion that amounts to unsoundness of mind or monomania.

J. R. GORE.

I have tried, and failed, to find an official to administer an oath, and send this as the substance of my testimony, if I could give it.

J. R. GORE.

The Defence, in support of the above motion, filed the affidavit of Wirt Dexter, which is in substance as follows :

725 I am one of the counsel for the defendant; was employed by him personally; I began preparation of the case for trial, together with E. W. McComas; that we soon found that the case was leading us into new and, to a lawyer, somewhat unusual departments of science, and, therefore, it became necessary to divide the various matters to be investigated, which, so far as practicable, was done; that the same course was observed in arranging for final argument of the cause; that on
726 Tuesday preceding the argument, and at least a day before the evidence was concluded, I was taken suddenly ill, and was unable to further attend at the trial, in consequence of which misfortune the points to be specially presented by me were only partially argued to the jury, if at all.

The Defence, in support of the above motion, filed the affidavit of George Buckley, which is as follows :

727 Says that he was present during the trial, and was present during the giving in of evidence to the jury on the trial on one occasion when one of the jurors was absent; that he remembers the juror leaving the jury box, and that subsequently his attention was called to the fact that evidence was going on before the jury in the absence of the said juror; how much of such evidence had been given at the time his attention was so called to the fact, he cannot say, but he knows that after his attention was so called to the fact, and before the said juror returned into court, considerable evidence was given, chiefly touching a conversation which the prisoner had with the witness concerning the wife of the prisoner, and that the witness was both examined and cross-examined during such absence to some extent; and further saith not.

In support of the above motion, the Defence filed the affidavit of Edward Martin, which is as follows :

728 Says he was present in the court-room on one of the days whilst this trial was in progress; that on that occasion one of the jury-

men, named Reuben Taylor, asked leave to go out, which was granted and thereupon said Taylor left the jury box, and was absent some little time; that during the absence of said Taylor as aforesaid, the prosecuting attorney, Mr. Knox, called a witness on to the stand, and examined him, and after said witness had testified upon Mr. Knox's examination he was cross-examined by Mr. McComas, of counsel for the defence; that such examination and cross-examination occurred during said Taylor's absence from the jury box; and it is this deponent's best impression and belief that said witness was about being discharged from the witness' stand as Mr. Taylor returned to the jury box.

In support of the above motion, the defence filed the affidavit of Stuart Harvey, which is as follows :

Says that he is a lawyer, practicing in Cook county aforesaid; that he was present during a good portion of the time the above indictment and cause was being tried before the jury; that on one occasion during the trial one of the jurors in the cause was absent from the court-room for some time, and that during his absence evidence and testimony was given to the jury by a witness for the prosecution.

In support of the above motion, the Defence filed the affidavit of N. Allen, which is as follows :

Says that he is a lawyer, residing in Cook county, and was present during the trial of the above cause before the jury part of the time; that he remembers distinctly that on one occasion during the trial one of the jurors was absent from the court-room for some time, and that during his absence, as aforesaid, a witness was examined and evidence given to the jury in the said cause by the prosecution; and further saith not.

The Defence also filed the following affidavit of Bernard Stampofski :

Says that he was present during the trial of the above-named cause against William Hopps for murder; that during the trial one of the jurors left the court-room, and was absent for some time, and that during his said absence the prosecution gave evidence to the jury, and examined a witness for the prosecution.

The People filed the counter-affidavit of Reuben Taylor, which is as follows :

Says he was one of the jurors on the trial of the above entitled cause at the last term of this court; and further says that he was ab-

732 sent from the jury box, whilst said cause was being tried before said court, upon only one occasion; that deponent, being under the necessity of stepping below, waited until the witness who was on the stand had finished his testimony and was leaving the stand, whereupon deponent asked permission of the Court to step below for a few minutes; that the Court gave such permission, and, in the company and in the immediate charge of an officer, deponent went below, but was not absent to exceed three minutes; that deponent did not leave the jury box on any other occasion during the progress of said trial, except at the regular adjournments of the Court; that at one time during said trial deponent, by the permission of the Court, and in the presence of an officer, spoke to E. W. Evans, Esq., only on matters of business; and again, in the same way, and under such permission, and in the presence of an officer, deponent stepped to the west end of the seat occupied by the jury, and spoke a word or two on business matters with one J. P. Brooks; that in neither of the last mentioned instances was there any testimony given whilst deponent was speaking to said persons;

733 that in the first instance last mentioned deponent stood up in his place in the jury box and spoke to said Evans; in the other instance, when he spoke to said Brooks, deponent did not leave the platform of the jury box, and occupied only a moment or two; that in neither of said instances was there anything said or done which had any reference whatever to the case on trial, directly or indirectly, by this deponent, or either of the said persons above mentioned.

The People filed the counter-affidavits of John B. Rice and Arnold Bigelow, which are as follows :

734 Say that they were members of the jury on the trial of the above entitled cause; that they have heard the affidavits of William A. Downs, Bradley B. Begole, John Gay, Thomas Shergold, and Robert Scott, also that of Reuben Taylor, read and know the contents of the same, and each for himself says that he recollects the instances of the said John Gay and Reuben Taylor leaving the jury box to step below, as therein stated, and that such absences are the only ones that occurred whilst the court was in session in the trial of said cause, according to the best of his recollection and belief; and each for himself says that it is his best impression that no testimony was taken in said cause during the absence of either said Gay or said Taylor; that being aware of the absence of the said Gay and Taylor at the time it occurred, and being aware that taking testimony in the cause whilst a juror was absent would have been highly improper, each says that he believes that if any testimony had been taken during the absence of either of said jurors it would have attracted deponents' attention at once.

The People filed the counter affidavits of William R. Downs, Bradley B. Begole, John Gay, Thomas Shergold and Thomas Scott, which are as follows :

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Say they were jurors upon the trial of the above entitled cause at the last term of this court; that the only persons who left the jury-box during the progress of said trial were deponent John Gay, and Mr. Reuben Taylor, and deponents; each say that upon one of the witnesses in the cause closing his testimony, the said Reuben Taylor asked permission of the Court to step below a moment; that such permission was given, and the said Taylor went out in charge of an officer, and in a very short time returned to his place in the jury box, and deponents each say that he can with confidence and positiveness say, that no witness was examined in said cause, whilst the said Taylor was so absent from the jury box, and the said Gay says that before leaving the said jury box as aforesaid, he asked permission of the Court to step below, which was granted; and deponent went in company and under the charge of an officer; was absent only three or four minutes, and returned to his place; and the said William R. Downs, Bradley B. Begole, Thomas Shergold, and Robert Scott, each says that he knows no testimony was taken in said cause during the absence of said John Gay; and the said Robert Scott further says that during the whole of the trial of said cause; his place in the jury box was next to the said Reuben Taylor on the right, and he knows that no testimony was taken during the absence of said Taylor, from said jury box, as aforesaid.

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The People filed the affidavit of Joseph Meeker, which is as follows :

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Says he was one of the jurors on the trial of this cause, and that his seat during the whole of said trial, was next to Reuben Taylor, on the left; that he remembers the instance of said Taylor leaving the jury box to step down below under the permission of the Court, during the progress of said trial; also the instance of Mr. John Gay, who had permission of the Court to go below; that both said Taylor and said Gay left the court under the charge of an officer; were gone but a very short time, and that those two instances were the only ones in which any of the jurors left the jury box whilst said cause was in progress of trial, and that he very distinctly and positively remembers, and can state that the examination of witnesses was suspended upon the said jurors leaving the jury box as aforesaid, and was not resumed in either case until the absent juror returned; that such suspension occurred by the direction of the Court, and in each case when the absent juror returned the counsel for the people, only proceeded upon, it being openly suggested that the juror had returned.

738

739 The People filed the affidavit of Ulrich Lochbilen, which is as follows:

Says he was present at the trial of this cause, and being bailiff of said court, attended the jury during the whole trial; that he went with Mr. Reuben Taylor down stairs at the time he left the jury box; that the said Taylor went directly and as speedily as possible down to the basement of the Court House, and after a moment or two, went immediately back; that such absence could not exceed three minutes; that he was present with said jury when Mr. John Gay went below in charge of another bailiff, in charge of said jury, and knows that when said Gay left the jury box, all examination of the case was suspended until his return.

The people filed the affidavit of Hosea Hooker, which is as follows:

740 Says that he attended the trial of this cause most of the time, and sat within the bar of the court where he had a fair view of the jury. That he recollects distinctly of two of said jury going from the jury box under permission of the court and charge of an officer. That one of said jurors who went out was Mr. Reuben Taylor, whom deponent knows well; that the other was John Gay; that neither of said jurors was gone but a very few minutes; that deponent had his mind on the subject at the time of the absence of each of said jurors, and questioned whether counsel might not overlook the absence of such jurors; and deponent states with confidence and positiveness that no evidence was taken in said cause during the absence of either of said jurors or any other juror to deponent's knowledge.

The people filed the affidavit of Wm. L. Greenleaf, which is as follows:

741 Says that he is and for a long time has been Deputy Clerk of this Court, and as such attended the trial of this cause. That when the juror, John Gay, left the jury box in the progress of the trial to go below, by permission of the Court, deponent had his attention called to the fact, and knows that the examination of the case was suspended during the absence of the said juror, which was brief, and was not resumed until said juror returned again to his place in said jury, and further says not.

The Court overruled said motion for a new trial, to which said ruling the defendant then and there excepted.

7 P.D. - 112

Hopps

The People

Abstract

Filed May 7th 1863
L. Leland
Clerk

7 P.S.

Hopps

The People

Abstract

7 P D

Filed May 7, 1863

L. Leland
Clerk

1863

1863

SUPREME COURT.

THIRD GRAND DIVISION.

WILLIAM HOPPS, Appellant, }
vs. } Appeal from Cook Circuit Court.
THE PEOPLE OF ILLINOIS. }

ABSTRACT OF RECORD.

25 The People called William James, who says, in substance :

I was coroner of Cook County, Illinois, in June and July, 1862, and I was called as coroner on the first day of July, 1862, to hold an
26 inquest in the town of Wheeling, Cook County, on the body of a woman, said to be Martha Hopps, wife of the defendant. I impaneled a jury, held an inquest on the body, and returned the verdict to the Circuit Court of this County. I found wounds in the abdomen of the body, a little below the ribs; the wounds were said to be inflicted with
28 a knife, which was produced before the jury; I was at the house, said to be the defendant's, where the body was. These are the minutes of the inquest which I returned into Court, and the persons whose names are subscribed thereto made oath to their respective statements.

The People called Mary Hopps, who says, in substance :

28 That she is a daughter of William Hopps, the defendant; that
29 Martha Hopps, the deceased, was her mother, and the wife of defendant. Defendant killed mother on the last day of June; he came home from mill about seven in the evening; he had been drinking some; he called names and scolded my mother, as he always did when he had

31 been drinking. I heard him go into the buttery once before breakfast, and once after; he kept liquor there; that was before he went away from home that day. He had been drinking; I could smell his breath very plainly. He began to swear at mother; called her a God damn bitch, a God damn whore, and so on; mother was washing. Defendant said he had not eaten anything since morning; my sister Martha got him something to eat, but he would not eat, but kept on talking as he had before. She went to empty the washtub, and he tried to prevent her; he got hold of her throat, and she got hold of his; I went and tried to get him away; he let go and commenced talking to me the same as he did to her; I told him he need not talk to me so, I could see deeper than he thought I could; what I said seemed to strike him, and he went into the house; he straightened right up and walked into the house. He came out in a minute, and went up to mother and said, "Martha, I am sorry." She said, "I don't want to hear any of your stories;" then he got angrier than before; she left him and went into the house; he went towards the dining room, turned directly round, came right back up to her and stabbed her; she was standing right before the kitchen stove in the kitchen. She died about six o'clock on the morning of July 1st. I have heard him threaten to kill her before

33 His first commencement of abuse that day was about her being
34 unfaithful to him; that was the burden; he called her a God damn
35 mean whore, and told about her being intimate with mean characters;
36 he named no one, but called them low people. I next saw him, after he stabbed mother, sitting in a rocking chair near the dining room door. I saw him the next morning, lying on the lounge. He said nothing when mother was dying; he came into the room, patted me on the shoulder, and said, "Never mind."

37 These quarrels commenced about ten years ago. He talked so
38 every time he drank; I never knew him to talk so except when he had been drinking; he drank every day. for the last four or five years he would have these quarrels once a week; sometimes oftener, and sometimes two weeks would pass without them; they more generally occurred at night; he would keep them up till ten and half past eleven o'clock; would go to bed and keep it up nearly all night; I have heard mother say he would keep it up nearly all night; he never kept it up day and night, but would sleep day times and keep it up three or four nights in succession.

41 My mother was forty-two years old when she died. She had had thirteen children; ten living. Father would get drunk sometimes so that he staggered; three or four years ago he would be so three or four times in the winter; he did not drink as much in the summer as win-

42 ter; his drinking has increased for the last three or four years. Father
said he was jealous of Joseph Filkins, Edward Cassel and Peter
43 Schenck.

Mother was a stay-at-home body and hard-working woman; she
43 did not visit the neighbors oftener than once or twice a year.

Mother left Father four times for treating her so that she could
not live with him. I have seen him beat her a good many times; once
he pulled her out of bed calling her the names I have given; he would
right after say he was sorry—remain so for two or three minutes and
turn right to abusing her again. He tried to persuade her to reform
44 sometime ago; but not for a long time. He said he had tried to
reform her. When she went away to her father's he would go after
45 her and promise to do better.

Father was generally kind to his children; always kind to the
younger ones. He was affectionate towards his children. He showed
no disposition for female society beside mother. Mother's manners
towards men were such as to never excite a remark; she never went
about with other men.

48 Some three or four years ago Father swore at me because I had
wrapped a thick shawl around one of the little children. I cried and
told mother; she spoke to him about it; he said he was sorry and did
not remember anything about it. I remember his whipping my oldest
49 sister when she was small. He whipped her with a horse-whip. I did
state before the Coroner's inquest that Father was always kind to his
children. Father was a hard-working man; in the winter did not
work so hard, but in the summer worked right along same as any
50 other laboring man. When Father was sober he never abused mother.

The People called Doctor Francis Mergler, who says in substance,

51 I am a physician and surgeon and live in the town of Wheeling,
in Cook county. I was called to see the wife of the defedent on the
52 last day of June, 1862. It was in the edge of the evening, and she
was very near dying. She had a long wound in the abdomen and she
died in consequence of it.

About four weeks before Mrs. Hopps was stabbed, I was called to
see Hopps; he was thrown from a wagon and carried to his house;

62 him ; he requested me to come armed, and I took a rifle ; I staid there
an hour and a half or two hours, and then took him to my fathers ; he
said he was afraid to go, and I told him I would protect him against all
the Masons that would come that night ; he did not talk much ; said
he wished to get to Chicago. He appeared to me to be very much un-
der the influence of liquor ; I thought he had been drinking hard and
63 over to my fathers. He staid at my fathers all night, and went home
the next day.

2 May 313 65 The defendant then offered to prove by this witness, his general
good moral character in the neighborhood where he had lived ; and
proposed the following question to the witness : " What has been
Hopps' general character, as a man, and in the community as a citizen " ?
which was objected to by counsel for the people. Objection sustained,
and the evidence excluded. To the decision of the Court in excluding
the same, the defendant then and there excepted.

66 Defendant's wife did leave him. During the time he was abstaining
from drink he appeared like all other men, rational. The night I went
to my fathers with him, about eleven years, I smelt his breath, and
should judge he had been drinking liquor of some kind ; he was a man
67 who, after drinking a few drinks, was stiller, and after he drinks con-
siderable, he talks with almost any one ; I have seen him weekly, and
sometimes daily, and think he drank liquor almost all the time except
68 when his wife was gone, and then I don't think he drank any ; I never
saw him drink any, and never smelt his breath during those times. He
kept liquor in the house ; when I went there he generally brought it on ;
69 he was a man who drank constantly, I think ; he was not generally
staggering when I saw him ; he is a man who stands a great deal of
70 liquor ; when he has been drinking a good deal he is jolly, telling sto-
ries, &c. I never saw him when he could not talk understandingly
about his business.

71 When he is drunk he is not disposed to be quarrelsome to those
around him. I think he drinks more in the winter than any other time.
72 When I first saw him, sixteen years ago, he had liquor on the table ; I
don't think he drank as hard then as of late years ; I first perceived an
increase of his drinking three or four years ago.

The defence called Eva Weidner, who testified in substance as
follows :

73 I know Mr. Hopps ; lived with him two years ago ; he abused his
wife by calling her names, and beating her frequently ; when he was

intoxicated, he beat her, and called her a God damned bitch ; sometimes it was for a day or two days, and once he continued to do so for a week ; I have heard him abuse her until I went to sleep, and when I got up in the night, and sometimes he would be at it when I got up in the morning ; she never quarreled back.

74 When neighbors came in he would stop and treat them politely, and when they were gone he would commence again in a loud voice ; he would follow her about and keep talking to her ; when she went for wood and to the water closet and to other places ; I could tell he had
75 been drinking, for I saw him drink the liquor ; sometimes when he had taken very much he staggered a little ; when the neighbors came in at
76 such times, he spoke friendly enough, and knew what he was talking about, and would act cheerfully as though nothing had happened. He was very kind to all his children, servants and neighbors, except when his eldest daughters would interfere to prevent his abusing his wife, then he would push them back ; he behaved as a man of honesty and kindness to all people. He frequently went to church with his wife and children.

77 When not under the influence of liquor he generally behaved well to his wife ; occasionally found fault and scolded her some ; I think he never charged her with anything wrong when not under the influence of liquor, but I never heard anything to the effect that he suspected her virtue.

The defence called Barbara Weidner, who testified in substance as follows :

78 I know Hopps ; have lived in his house two years ; left there ten years ago ; on one occasion while I was there, Hopps left home in the night, and staid away two days without his wife or I knowing where
79 he went ; he went away at eleven o'clock in the night ; I could not say whether he had been drinking anything the day before or not ; I did not see him drink anything.

The defence called John Ermischer, who testified in substance as follows :

80 I know the defendant ; worked for him five days, about a year ago ; was at his house seven days ; I went there in the evening and inquired for work ; I asked Mrs. Hopps if there was any work there for me ; she said Hopps was in the house ; I went and asked him ; he told

me roughly to go out and milk the cows; I told him I could not milk, and then he told me to feed the hogs. The first night I was there Mr. Hopps was loud in his speech and very noisy all night; I could not understand what he said. The second night, Hopps said, Johnny, sit down here, and I sat up till about two o'clock at night, during all the time Hopps was using language, such as whore, bitch and going to kill her; he was sitting opposite to me, near the table, on a chair; he looked passionate and wild; from time to time he was laughing and smiling; he kept moving his chair to and fro—never sat still; while sitting at the table, he was always murmuring, speaking to himself saying: "That's good eating, that's fine potatoes." &c. The first time I was there, he made these motions (showing them); when he was speaking, he would look at one fixed point, and gaze at his plate; to me he did not look like a sane person; the last day I lived there he looked like any ordinary man; the first day I was there, he kept talking during the whole meal; he made the same motion to every dish he tasted; said that's good, and so on; he did not address any particular person, but muttered and talked to himself.

Mr. Stamoski summoned me as a witness; he said I must come to Chicago and give my testimony in the Hopps' case; he asked me what I knew about Hopps, and I told him. In those first two days that I was there, when he was boisterous and noisy, he worked very hard, and I do not think an intoxicated person could work so hard; I could not keep pace with Hopps; he was raking in the harvest field; he had three men at work besides me; they had liquor in the field; I did not see Hopps take any, and am certain he did not; I was binding sheaves; I drank some and the other men drank some; Stamoski did not enquire of me whether Hopps called his wife a bitch and a whore. I did not tell him what I have sworn to here, the first time I saw him; he read the summons to me; I told him I had stayed with Hopps five days, and I knew him; that is all I told him. It may be that I told him what I knew about Hopps; I don't recollect clearly; Hopps does not talk German. I understand enough of English to know what he said. When he told me to milk the cows, I understood him, and replied that I did not know how to milk cows; when he told me to feed the hogs, I went and asked the other servants how to do it. I slept at Hopps' seven nights; Sunday I went home; Monday I returned again, and Hopps was in his regular state of mind.

The defence called James B. Bradwell, who testified in substance as follows:

I live in Chicago; am County Judge of Cook County; have been so over a year, now; have known William Hopps ever since he

92 has been in this county; I know his brother, Ralph Hopps. Proceedings were had in my court in reference to Ralph Hopps; the first proceedings were August 4th, 1862; they were had at the instance of Henry Merrill; the second proceedings were had on the 14th day of the same month, as shown by pages 399 and 410 Record R.

93 I presided at the time the case was tried, to which the record refers; it was before a jury, and Ralph Hopps was present.

94 When I first knew Ralph Hopps, twenty-nine or thirty years ago, he was a nice young man, and a competent person to transact business that fell in his way; looked after his own interests, was sociable and took an interest in things going on around him. In 1840, he had an eight horse-power threshing machine, and threshed for my father, and was then as right and bright as any of us. While he still had this machine, there was a change in him, and he lost his reason; he quit his own business—entirely gave it up; could not transact business on his own account; he would work, and probably be as good a workman as any man, if set to work, but his mind was in such a state that he could not do business in any other way.

95 When the country was new it was pretty hard times. We had some potatoes and Ralph and William Hopps used to come over there and roast potatoes. Ralph would talk as well as any body, and was a well-informed man; would buy and sell horses; give and take boot and do business the same as any other man.

96 While he still owned this machine and the horses, he got into such a state that when you would go and speak to him, perhaps he would speak to you and perhaps not; sometimes he would turn round and look at you and laugh, and you would see that he was a changed man; not the same man he was before. Whenever I have seen him since then, he has always been in that state, and since then I have never known him to do any business on his own account; his brother William had to settle his affairs up at that time; of late years, Ralph has changed some; his eye has become more quiet and of an idiotic appearance; I consider it a quieter kind of insanity than it was before. I have not seen him during the last year, except sometime in August last.

98 I have known William Hopps as long and as intimately as I have known Ralph. I have frequently noticed a great peculiarity about William's eyes; it is easier to understand than to describe; at times his eyes would look clear and sparkling, and he would talk brisk and lively, shake hands with you—say something about the Bible or give you good advice; at other times, he would hardly speak or notice you, and

99 you would be struck with his appearance, and feel that all was not
 100 right. On these occasions, he was not laboring under the influence of
 liquor. He was a man of strict honor and integrity; he was a man
 that was very tenacious of his character. It would hurt him wonder-
 fully if he thought anything was said that would impeach his charac-
 ter for honor and honesty. As a farmer, he was an energetic, hard
 working man—making money and improving his farm—built a very
 nice house and was regarded as a fore handed man. There is nothing
 to compare with his house in that neighborhood. I never saw Mr.
 Hopps either turbulent or quarrelsome in company.

102 Defence here read in evidence a deed executed by William Hopps
 to Benjamin Luce, as conservator of Ralph Hopps, providing for the
 to payment of one thousand dollars by William Hopps to said Conserva-
 tor as full settlement of all accounts between said William and Ralph;
 108 also providing for the maintenance of said Ralph by William.

109 The petition on which these proceedings were had was sworn to
 before me on the 4th day of August, 1862, by Henry Merrill and sets
 forth that Ralph Hopps of the town of Wheeling is an insane person
 110 and has been so insane for a long time past, and asks that a jury may
 be empaneled to inquire into the sanity of said Ralph Hopps. This
 petition was drawn by either Mr. Eldridge or Mr. Tourtelotte, Att'ys
 of Mr. Merrill; they appeared before the jury and attended to the
 111 proceedings. I have known Mr. Merrill a great many years. Some
 time before this occurrence, Ralph had left his brother William and
 gone to live with Merrill, and there was some feeling on the part of
 William Hopps in regard to Merrill.

112 Evidence was heard as to the amount due from William to Ralph;
 something was said about William's being conservator for Ralph; an
 objection was made that he owed Ralph and his interest would be an-
 tagonistic and a continuance was had on the point as to who should be
 conservator, and it was at last agreed that Mr. Luce should be con-
 servator. Mr. Merrill and Mr. Van Vlack were sworn before the jury,
 113 and Ralph Hopps was there and examined by the jury and by Doctor
 Blain. I questioned Ralph, and the parties did; we would ask him a
 question and he would give you a smile and you could see at once that
 he was not right.

William Hopps sent for me after he was in jail and talked with
 me, and gave me the whole history of his troubles, and told me what
 had caused it. When he had got through telling it, he would go on
 and repeat the same thing over three or four times.

He said that in community, reputation, honor and character were above all other considerations; that his wife had done things she ought not to do, and was ruining his character; that he was jealous of her, and that had caused his trouble; he justified his act on that ground, and said it had got to come to that—it could not be otherwise.

He said his wife had allowed men to come to the house. He did not seem to realize that he had done anything wrong. At another time he gave me the names of three or four individuals of whom he was jealous. He said that when he took his little children on his knee and dandled them "dear little bonnies I could not help thinking it was not all right," and he said as I would raise them up it would strike my feelings terribly. He said I have often remonstrated with my wife and told her in bed at night that these things were wrong and she promised from time to time that they should be remedied, but still it would keep going on. He told me he was jealous of Joseph Filkins, Peter Schenok, Edward Cassel, and I think one or two more; one time in particular, Filkins came up when he had a child, and they were drinking health's, and Filkins drank a toast "here's to the man who gets the male children, those who get females are fit for nothing but teasers;" he said it was a terrible thing for a man to come into his house after what had taken place and insult him in that way; it was the most awful thing he had ever known. He said something about the first suspicion he ever had of his wife. He had some difficulty with a neighbor about a horse, and Filkins was one of the arbitrators, or was to be, and fixed it so that the other party beat him; that Filkins had pretended to be a friend and had deserted him, and this he laid to the trouble with his wife; this was the beginning of the trouble. He said how comfortable and how nice they could have got along if his wife had only been true to him; he had gone on and built one of the largest houses in the country and had worked almost night and day; had got up early in the morning and drawn sand and bricks and done all he could to make things comfortable, and it had come to that; what could be done; reputation was above all things; he could not stand it. He would go on and tell about his wife and his being jealous, and if I stopped him he would tell the same thing over four or five times. He felt sure his wife did so; he said there was no question about it. At all times he expressed that deep conviction; nothing that I could say would make him say otherwise.

117

He said he loved his wife and that he had spoken to her often and told her how he loved her, and that all he asked of her was to be true to him; that in every other respect she was a good wife and had done well for him. He said he had lain awake night after night and talked to her and quoted passages of scripture relative to her duty, and told

her what an ornament a good and virtuous woman was and that a woman had the keeping of the character entirely of her husband. He said it had got to come to that, and did not seem to realize any sense of guilt or wrong on his part and did not express remorse, and said whatever is right and fair I want done.

He never said what the result would be that I recollect of. When talking on this question of his wife he seemed cool and you would never see a change of his face, but his eyes would sparkle and he would seem to go on in a peculiar kind of way till he had done with the subject; if you changed the subject he would go on in a different way.

120 I am thirty-five; was born in England; came over when an infant. I cannot tell the precise date I became acquainted with Hopps, but think it was the first day he came to Wheeling.

121 From Wheeling we moved to Buffalo Creek, about a mile and a
122 half north of Wheeling; we moved from there the Spring after Harrison was elected, Spring of forty-one I think. The defendant came into that region while we were at Buffalo Creek and I think has been there over twenty years.

123 I might have been ten years old when I first saw Mr. Hopps; I
124 should think William Hopps might then have been twenty-five years of age, probably not thirty. I was not a playmate of theirs; they were hard-working men and did not play with any one. We moved from the vicinity of Wheeling in 1844 to English Grove, seven or eight miles from Hopps' place. There has been very little time that I have not been in that neighborhood more or less; (my father lives there now;) 126 except two years, I was at Memphis. My house is now in Chicago and has been since December, 1854. Mr. Hopps was a client of mine up to my election, although he was a man who had very little law business. 127 Wheeling is about twenty-four miles from Chicago. Since I moved here I don't think I have been at Hopps' house more than once and 128 then I believe he was not at home. I have seen him intoxicated, but not frequently; the first time was at Joseph Filkins barn, at a husking, a 129 good many years ago; about twenty years ago; he was a good deal intoxicated; we had liquor at the husking and he was very noisy and boisterous. I have seen him within a few years when I thought him the worse 130 for liquor; since I have been in Chicago I have seen him twice the worse for liquor; I have also known that he took a little liquor usually, but not 131 of his being drunk very often; the last time I saw him under the influence of liquor was in 1861; I know the time by memory and comparing 132 events; I never heard anything about a big drunk he had a little

133 before Christmas—the instance I refer to was in my office at Chicago during election, I took a glass of ale with him, but he was not in liquor then; I have taken a glass with him a number times, but never but one at a time; I have seen him when I knew he was worse for liquor. Soon after he was put in jail he sent for me and I went down to see him; I had been his friend and legal adviser and he sent for me same
134 as any man would who was in trouble. The jailor came for me to go and see him several times and Mr. McNabb came once. I think I did
135 not advise him about his counsel, but talked with him on that subject at one of the interviews. He employed the counsel he wanted himself and exercised his own judgment; we talked the matter over about counsel and about different lawyers; he said he had concluded to select one counsel and that one should select other counsel if he needed any; he had got his mind made up on that subject before I saw him the first time.

136 He said he had made up his mind to employ Mr. Van Arman, of Walker, Van Arman & Dexter; he said some friends of his had talked to him about it; I am not positive that he told me this at the first interview; I told him that I thought Van Arman was a very able lawyer
137 and good counsel, he said nothing to me about Van Arman's carrying him through the Supreme Court half a dozen times; he told me what
138 he wanted done was what was right; I did not tell him that Van Arman would clear him; I expressed no opinion on that matter; he said several had advised him to employ Van Arman; he acted on the advice
139 of his friends; he talked with me about employing other counsel, and said his friends had advised him to leave that to the counsel he had employed; I think he had made up his mind to have other counsel
140 before he talked with me about it; I told him I should select counsel according to my own notion; he seemed to come back to the plan of employing one; said he did not know much about it, and would leave it
141 to his friends; something was said about what counsel would charge; I told him I did not suppose any counsel could really tell how much it would cost; he did not ask me about how much it would cost, nor never told me what he had agreed to pay. He is a very good farmer—
142 as good as there is in the county; is wealthy, and has as good a home as there is in the county; my impression is that he was poor when he came there. He is a good deal smarter than Ralph is; when I first
143 knew them they were both hard working intelligent men. I should say that William was naturally the smartest man; a little, but both of them were bright men for business, and understood what they were about; of late years there has been a great difference between the two. I will not say positively when the change commenced, but think it was in Polk's administration; about that time the change become visible, and Ralph Hopps became insane, and has been so since to my knowledge—
144 notoriously so with the neighbors; since then they have been very different men. William was a man of good moral character, except that he

would take a little liquor and sometimes get drunk. I have heard of his
145 beating his wife, but don't know whether it was before or after this
thing. A man might be worthy in some respects and not in others. A
man that would get drunk and abuse his wife, so as to drive her from
home, I would not call a worthy citizen. I have not said that I knew
146 of his abusing his wife; I have heard several times that she left him;
I heard people of fair character say so. If any man touches a
woman it is not a worthy act. A woman ought to be sacred—there is
no doubt about that; he might be the best man in the world as to hon-
esty and other traits, yet that would be a bad quality. I was speaking
147 of what I had seen of him for over twenty years—that I had seen noth-
ing wrong, except that he sometimes took a glass. I am not stating re-
ports. I was talked with about Ralph by Mr. Merrill and Mr. Tourte-
lotte. They got up the petition, without my knowing anything about
it; I gave no advice as to the propriety of it; Mr. Eldridge said it was
148 drawn; it was after Hopps had employed counsel. I consulted with
none of the lawyers, nor they with me. Mr. McComas came in as to
the conservator. Mr. Eldridge is gone Lieutenant in Van Arman's
Regiment. I think it was Mr. Tourtelotte, Mr. Eldridge's partner, who
first spoke to me.

149 Ralph Hopps did not say whether he wanted an inquisition or not;
he looked silly and laughed; I don't think he was there when the peti-
tion was presented; he was when the matter was up before the jury;
it was all done in one day, and the jury returned a verdict that he was
150 a distracted person. Merrill did not state to me that he (Ralph) was
half idiot. I can't remember all the evidence that was given; it is in
the statute "Idiot, Lunatic or Distracted person;" the petition is signed
and sworn to by Merrill.

(The Judge explained that by Webster, distraction meant madness
or state of disordered reason.)

151 I think it was in Polk's administration that he owned that machine;
he was not raving, but quiet, and when you said anything to him he
would laugh. When he threshed for father, he was sensible and rea-
152 sonable; very soon after that his mind became changed. I never heard
that he had been injured by medicine. I said that at the time I men-
tioned he became a changed man—that he had been getting worse and
153 was a duller and quieter man. I cannot state just when he was obliged
to have some one take charge of his affairs, and do not know much about
him for the last few years back, but for a number of years after Polk's
administration, he was not able to do business. I was not at that time
counsel for either of the Hopps, but have always had most kind feelings
for both of them.

154 I knew the condition of Ralph, but did not advise the appoint-
155 ment of a conservator before, because I supposed his brother was con-
servator. This conservator told me that this man was crazy; he told
me this in 1855 and 1861. I knew his brother settled up and conducted
his business, and thought he was conservator. His intellect is weaker
156 than some time ago, but he has needed a conservator for the last ten years
or more as much as now. The reason it was done now is simply this,
that for some time previous, Ralph had left William, and gone to live
with Mr. Merrill, who was a particular friend of Ralph, on account of
which a friendly feeling had not existed between Merrill and William
Hopps; and Merrill's object in having a conservator, was to fix Ralph up
and make him comfortable.

157 Mr. McComas appeared, and my impression is, for Mr. Hopps; he
opposed the appointment of Mr. Merrill as conservator.

158 Mr. McComas took no part in the trial of the case; simply repre-
sented William Hopps as to who should be conservator, and said he
did not care who it was, if not an enemy of William Hopps. It was
159 left over to see if some man could not be agreed on by the parties, and
if not, the Court said he would appoint one unknown to either of the
parties. No one connected with William Hopps had anything further
to do with the case.

The defence called W. F. Tourtelotte, who testified in substance
as follows :

160 I live in Chicago, and am an attorney. Sometime after the pris-
oner had been committed to jail, one Mr. Van Vlack came to my office
and said Ralph Hopps was incapable of attending to his own business.
Mr. Merrill, for whom Ralph Hopps had been working sometime, came
with him. After stating the fact of Ralph having some property,
which was in the hands of the prisoner, we advised proceedings be had
before Judge Bradwell for the purpose of getting that property for
him. I was there part of the time; was there when the physician was
examined. Mr. Eldridge was there most of the time and conducted
161 the case. Mr. Luce paid me for what I did about the matter. Mr. Mc-
Comas came to my office, on the subject, but I think that was after
Ralph was declared a lunatic; he came with Mr. Luce to make some
162 statements about some property. This matter came up in the ordinary
course of my business. My partner is Lieutenant Colonel of the 127th
Ill. Regiment, Colonel Van Arman's regiment.

The defence call John C. Haynes, who testified in substance as
follows :

163 I have lived in Chicago twenty-eight years; was formerly Mayor; have known William Hopps about twenty years; have done business with him for many years. I was merchandising, and he bought goods of me. I have bought wheat of him. His appearance always struck me as strange. Sometime last winter, a year ago, he came into the bank of which I am president, I think to draw money on a check. I went up and spoke to him; he looked at me and said, what is your name? Is it so and so? (I don't recollect what name he gave me.)
164 Why, said I, is it possible you don't know me. No, sir, he said, I don't know you. Feeling myself in rather an unpleasant predicament, I walked away into my room, and he went out. I think he looked crazy; his appearance was orderly, but he looked very strange to me. I had known him for twenty years, and was in the habit of meeting him in the street and other places. There was nothing in his appearance which led me to think he was under the influence of liquor. I have had considerable dealings with him; he was a peaceable, honorable, upright man.

165 I have never been at his house, but have met him at Wheeling several times. I have met him oftener when I have not traded with
166 him than when I have. It was sometime last winter when he came to my bank, in the forenoon; he was not there many minutes; I had no
167 account with him; I think if he had been drinking, I should have known it; I do not know his age; I never had heard that he drank to excess.

The defence called Frederick Webber, who testified in substance as follows:

169 I live at Wheeling; saw Hopps on the day Mrs. Hopps was killed; about five o'clock in the afternoon, he was at my shop; he said he had been waiting for me all the afternoon, and had got some screws, and wanted me to go to his house and raise a barn sill; he wanted me to
170 go that afternoon, but as I was not there, said I could come and take breakfast with him, and go up early; he stopped there ten or fifteen minutes, and said, you can do almost any kind of work—fix up churns and chairs; I had done something of that kind that pleased Mrs. Hopps; he said, when I have her down again I will take her to your house; he went down street, got in his wagon and drove home.

171 I was there when Hopps got hurt; I was there before Doctor Mergler got there; Hopps lay on the ground and did not know anything; his face was very much bruised; when he was at my shop he did not look very pleasant, he talked rough and loud to me.

172 I am a wagon-maker; do jobs for Hopps; have fixed chairs for him; he had some screws; I used them the next morning.

The defence called John Bryden, who testified as follows :

173 I live in Lake county; am an Englishman; have known Hopps ever since I came to this country, twenty-one years I believe; In England my father's family lived near Mr. Hopps' family; I knew an aunt of Mr. Hopps; her name was Mary Hoard; I was young and do not recollect much about her; I have a father living in Bremen County, Iowa.

175 I was subpoenaed last Sunday by Mr. Stamposki; I learned last
176 Thursday that my father had gone to Iowa; I did not tell Mr. Stamposki of that fact; I supposed my father resided in Iowa but did not know where.

The defence called Clarissa Filkins, who testified in substance as follows :

178 I was at Hopps' house on the morning of his wife's death, at about
179 ten o'clock; when I went to the house I asked for Mr. Hopps, and they told me he was in the parlor; I went up stairs to see the young lady that was ill and met Hopps in the hall; I said good morning; he did not answer; he did not seem to want to see me; I said Mr. Hopps what have you done, and I said how can you live? he said I don't wish to live and walked down stairs; I went down to the dining room and he was getting his clothes on ready to go away with the officer.

180 After he got dressed I asked him if he would not like to go in and see his wife; at first he hesitated and said no; then he sat a few minutes and said he would go in; we went to the corpse and uncovered the face and he looked at her and presently threw the sheet on her face and went out; he said nothing, nor did any one else; when he first looked at the corpse he looked very fiendish and vindictive; he went out of the room and sent for his daughter and told her about business affairs—where he had money owing to him and where he owed, and asked for an account book to put down some accounts, and said he had money deposited in the city at Adsit's; his daughter brought the account book and he said he did not put down the milk for a few days in consequence of a lame shoulder he had—had it for sometime; he took
181 a pencil and put it down up to that morning; he said he thought he should have some breakfast before going; the girls got him some and he sat down and made a hearty meal; he seemed very unconscious of anything that was going on as regards any feeling; the table where he

ate sat right in front of the door of the room where the corpse lay ;
when he got ready to leave, he took his overcoat and satchel ; his
daughter was in the hall, and was feeling very badly, and would have
fallen if I had not caught hold of her and took her back to the room ;
182 after he got out he came back, silently and slowly, and went right up
to her and kissed her, and walked out without saying a word. That
was the eldest daughter, Mrs. McNab. He got his overcoat from the
closet and went right by the body of his wife.

My husband is dead. We lived two miles from Hopps', from 1836
to 1852. During that time, I never knew that Mrs. Hopps left Mr.
Hopps. She never was at my house ; I have been at her house, but
183 was not a frequent visitor there. She came to my house in this city
once, about six years ago.

The defence called John F. Gilbert, who testified in substance as
follows :

184 I have had some observation of deranged people in my own father's
family, and have lived near a private insane asylum in New York ; was
within a few rods of it, and saw the inmates very often.

185 I was present when the prisoner was put in jail ; had never seen
him before ; he walked through the office with a carpet bag in his hand,
and took a seat in the hall ; I then noticed his eyes being very sharp
and piercing ; his eye, his look, and general manner were peculiar, and
connected with the impression I had of the state of his mind. When
186 I saw him he was with the sheriff. I did not know what he was ar-
rested for. I don't know that I ever saw a man soon after he had com-
mitted murder. I heard no conversation from him.

The defence called Thomas Bradwell, who testified in substance
as follows :

187 I am an Englishman ; have lived in Cook county a little over eight-
een years ; have known Hopps since he came to the country, and for
some seven years lived within two miles of him. Some eight or ten
years ago I put up one night with Hopps at the Sherman House in
Chicago ; being well acquainted, we talked over farming operations.
188 I was telling him how well he got along, and in regard to his wife what
an excellent dairy woman she was, as he could sell their butter and
other products at the Sherman and Tremont houses. I remarked what
a very good woman his wife was. Yes, he said, she is a very good
housekeeper, but a woman should be above suspicion. I could not get
anything more out of him. I did not think Mrs. Hopps was a woman
about whom there was any suspicion. The first time I ever saw Hopps

he was introduced to me by Joseph Filkins; it was in the road; he
 was the wildest looking man I ever saw. I have found him liable to
 sudden changes. His woodland was close to mine; I used to see him
 go there, and he would answer me cheerfully when I spoke to him; on
 his way back I might speak to him and he would give me no answer.
 I would remark it to persons close by; between his going and coming
 there might be an hour, and he would appear quite a different man. I
 knew he was not in liquor; he would come from his house and pass
 190 the tavern without going in. The night I passed with him at the Sher-
 man House, was after I had become well acquainted with him. I am
 191 the father of James B. Bradwell. I think it was from eight to ten
 years ago that I passed the night with Hopps at the Sherman House;
 I think we were there only one night; I do not know what time a year
 192 it was. My business in town was, probably, to sell grain; I am a
 193 farmer. I thought of the occurrence at the Sherman House long be-
 fore Mrs. Hopps was killed. When I heard that Hopps had got jeal-
 ous in his mind, I remembered that I had heard him state that very cir-
 194 cumstance. I think I first recalled it about seven years ago, and one and
 a half or two years after we had roomed together; we slept in the same
 195 bed; there was no other bed in the room; they were crowded at the
 house at the time; no other person slept in the room. I think I have
 196 known Hopps about twenty-seven years. In going to the woodland,
 after he passed me, he would go about a mile and a half before return-
 ing. I think sometimes he had a man cutting wood there; as he went
 197 along, I passed a few words with him; I don't recollect what. I did
 not go down to his timber land with him; he might have drank down
 198 there, but I presume not. In my twenty years' acquaintance, I had
 seen some strangeness and stupor in him.

The defence called W. W. Drummond, who testified in substance as follows:

198 I became acquainted with the prisoner at the bar in 1855. I was
 then practicing law in this city, with Col. W. H. Davis, now dead; he
 199 introduced me to Mr. Hopps, who came to the office for the purpose of
 consulting with Col. Davis (they both being Englishmen and Free Ma-
 sons) in relation to his wife, who was then at Paw Paw Grove, Lee
 county. They had been separated some time, and he was anxious to get
 her home. After consulting for some time, Col. Davis went out to see
 some other persons—Col. Filkins and Capt. Cassel, I think. While he
 was out, Hopps commenced talking to me about Masons, and requested
 me to attend the next meeting of their Lodge at Wheeling for the pur-
 pose of inducing them not to kill him, and he stated that Mino Winch-
 ell, Col. Filkins, Capt. Cassel and Col. Davis, and some others, were
 combined together for the purpose of killing him. I was very much as-
 200 tonished at the manner of his conversation, and never more surprised

in my life than at the statements he made with reference to these men ; that he, a Master Mason, would suppose for a minute, that these men were engaged in any such proceeding.

201 Mr. Hopps was not under the influence of liquor, I am certain, for
more reasons than one. In the first place, he said he had not drank
for six or seven weeks, and was very anxious to get his wife back. I
or Col. Davis wrote to Mrs. Hopps and asked her to come back. In a
202 little while, he called again, said that she had come back, and they were
living very comfortably. Col. Davis was one of the men who was men-
tioned as conspiring. After Davis returned to the office, I told him
what Hopps had said—particularly that part relating to the Masonic
Fraternity. Mrs. Hopps, or some of her friends, had applied to Col.
203 Davis to file a bill for a divorce in this Court, or some other. My im-
pression is, that we filed a bill in this Court. The letter to her was
written after this conversation, and after filing the bill. I never heard
204 he was expelled from the Lodge. I cannot, for Masonic reasons, state
why he said they were about to take violent measures against him ; he
referred to an ancient simile and type in the Masonic arts, and likened
himself to it. I thought it very preposterous that he should do so.
This letter is Mr. Davis' hand writing. I have put my initials on it.
I never met Mr. Hopps in a Lodge ; he was introduced to me by Ma-
sons in good standing ; under Masonic honor, he would not have been
so had it been otherwise. I did attend a Masonic funeral with him.

The defence called John Adams Allen, who says in substance :

205 I am a physician and surgeon, teacher of medicine in the Rush
Street Medical College in the city of Chicago. I have been in Chicago
between three and four years. I have been engaged in the practice of
medicine since 1845, and collaterally in the teaching of medicine since
1848, in connection with medical colleges.

The subject of insanity comes within the range of my duties as a
teacher and practitioner, and is in my branch as a teacher. I have had
opportunities for fifteen to eighteen years, in connection with alms-
houses, of seeing insane persons, and had charge of them in almshouses,
prior to the establishment of asylums in Michigan. I am a regular
graduate in my profession.

206 I know the prisoner Hopps. I become acquainted with him
since his arrest, and while he has been in jail. I first saw him about
three or four weeks since, and have visited him at intervals a number
of times, spending each time from one to three hours with him. I have
visited him, probably, six to eight times.

Every practitioner of medicine has his own plan of examining a
patient. I usually, as in this case, notice the age of a person, by ap-
pearance, and also by inquiring.

207 His age I judged to be from 55 to 58. I think he told me 58. The age is of importance, as it indicates a tendency to a particular disease. I found him to be of "nervous" temperament, a predominance of activity of the nervous system, intermingled with what we call bilious temperament, especially striking was the predominance of the nervous temperament. I found his countenance to be very peculiar in its expression; there were certain fixed, rigid lines, and a particular appearance about the angles of the nostrils, as though pain had always been present.

There was a peculiarly sharp expression of his eye, occurring instantaneously and then passing away; the eyes being drawn comparatively from the observer, and then pass as though they looked upon vacancy.

His skin, I noticed, had a dingy and somewhat dirty appearance; not exactly the sallowness which accompanies biliousness, but a sort of dingy, dirty look.

The formation of his ears is peculiar. The ear is flattened upon both sides; the different parts are flattened in a peculiar manner, which would attract attention; through appearances corroborative opinion can be drawn; the projecting part of the ear is flattened down upon the head, which is a fact that would not generally be noticed.

208 I examined his skin by feeling with the hand, and his head, and found the temperature of it to be higher than that of the externals, apparently above that of the trunk. This appearance was corroborated each time of visiting the patient.

I examined next his pulse; it is remarkable, varying constantly from 90 to 120 in a minute; the natural speed of a pulse is from 72 to 75; his pulse is very weak and feeble.

I examined his heart by placing my ear upon his chest, and found nothing noticeable but its feeble action, corresponding with the condition of his pulse, beating frequently and weakly.

I examined his lungs, because the condition of the pulse sometimes depends upon the formation of tubercles, but they were free from disease.

There was nothing about the abdomen to attract attention. His tongue was red upon the body, with a slight furred surface at the sides. His intestines had very little movement about them; they were torpid and inactive; there was, however, no fulness of the bladder.

209 His skin, at one interview, was dry, with peculiar condition; at other times, it was covered with a sticky moisture, indicating inactivity of circulation. I found no indication in the activity of the abdomen or extremities, although I examined, because the peculiar condition of the pulse rendered it desirable. The object of examining these other parts was to ascertain if there was disease in them.

The prisoner gave me, at my request, a statement of his past bodily health. It was a little difficult to obtain information on this point, as he gave me an account of a sickness, which I supposed to be re-

cent, but which I found had been forty or fifty years ago, which he told me he did not think amounted to anything. He told me at first, that he had never received an injury from a fall or otherwise, and afterwards, that he had been thrown from his wagon upon his head, previously to his arrest. He said it did not affect his head much or his shoulders, but it made him nervous; the pain in his shoulder and the nervousness connected with it kept him awake a number of nights.

210 He told me that when he first came to the jail he did not sleep at all for a number of nights, but that now he was used to it.

211 For the first fortnight, he said his bowels were constipated—afterwards they became more regular.

In regard to his mental condition,—the facts being intermingled with the conversations had at different times with him—my opinion may be biased by the manner in which he gave the facts. I found it very difficult to get a connected story from him, for when I would ask him if he had been speaking of any recent sickness, he would go on to give some details with all the minutæ; I would then enquire about the time, and find it was a disease that occurred a great many years ago. I would call his attention to something later, and while telling me about it, he would go off to something else, which seemed to be suggested by his sickness. I could only find out that he had ague and jaundice following, at some time within these few years; since he has lived in the country, he was treated actively for it for some time. He would break off to speak about the doctor, or about some neighbor, and I could not get a connected history for that reason. He would talk for a little distance with great particularity with regard to some disease, and then would go off and talk with as much detail on something else which had come up. When I asked about the falling from the wagon and the injuries then received, he gave me an account of it, and then went on to tell about the wagon, the wood it was built of, its hubs, and the history of its maker. I could not get definitely from him the details of the transaction. I saw that it was a sort of tangential action of the faculties going off into episode. He was perfectly orderly in his manner, when he commenced, until he went to something else, and then he was orderly in this; giving all the details, with a degree of attention and apparent candor, which would strike any one. He would go through with his subject until something came up, which would call his attention, and then he would go off upon that. It is difficult to describe the manner in which these suggestions would seem to lead to others. He would generally talk quite rapidly, when he started on any point.

213 His manner was peculiar; he generally came up from the jail to a room above, where there was an iron bedstead, upon which he would sit bolt upright, without moving for three hours; with a quick, sharp glance his eye would look up, and then again resolve itself into vacancy. He would go off tangentially, and treat upon a second subject, speaking with very great earnestness and candor, as though he wanted

to impress the truth of what he said. I would perhaps make some discrepancy in my statement, and he would check me in an instant, and tell me it was not so.

214 He told me that in his social relations he had always been pleasant and peaceful, until the time of a lawsuit he had a good many years ago, or trouble with a man about a horse; he hired a horse of a man, and while he had it still in his keeping, it died of the "botts," that the owner wished to have him pay for the horse; some questions arising, they left it to arbitrators, who decided that Mr. Hopps was not responsible. Mr. Merrill thereupon brought the matter to Chicago and employed Mr. Arnold to prosecute it, as Mr. Merrill said at the advice of his neighbors,—and he named Filkins, Cassell and Schenck—Filkins and Cassel certainly. Somehow, it was taken out of Court, and left again to arbitration, and, I think, he said, Filkins was one of the arbitrators. The arbitrators decided that Mr. Hopps should pay thirty-seven and a half dollars, and Mr. Merrill should lose a like sum. He said that the neighbors had entered into a conspiracy to ruin him. I asked him how that could be; he told me that Mr. Filkins was one of the arbitrators, or had advised

215 that he should pay thirty-seven dollars, which he thought was wrong. I asked him what that had to do with the matter; he said it had everything to do with it, they made a combination against him, and put up these men, Schenck and Cassell, both of whom were loose characters, to seduce his wife, and be revenged on him. The reason Filkins could not do it was because he was a Mason, and could not do anything wrong to his family himself. He said it was very certain it was done, because after a child (a boy) was born, he invited Filkins to go and drink with him, and Filkins gave this toast: "Here is to the man that can get boys, the rest are only teasers." "I looked at him, and I knew then that he thought that I could not get boys." I asked Hopps, if he had any further reason for suspecting; he said he had. On one occasion he was down in the city to sell some veal; he was walking along with Filkins, and Filkins said: "Well, these women are pretty good things after all," and he said, "I could not help thinking what in hell that has to do with veal," and that Filkins

216 would not have made such remarks if he had not the subject upon his mind. I asked him if he had any other reason, and he said he had; he came home one day while Mr. Schenck was there, who came to get some onions; he was to have half a dollar's worth of onions, and Mr. Hopps was heaping up the measure, and Schenck said, "Oh, no! there's enough, there's enough," and he could not understand why Mr. Schenck was so good natured; and he found that Mr. Schenck had been there to see if Mrs. Hopps could sell him any onions, and Mrs. Hopps did not like to sell them without Mr. Hopps being present, so he came back next day. After the child was born, Schenck came there one day when he was butchering hogs, and either Mr. Hopps brought out the baby, or some one did, and he said to Schenck,

217 "Here's the little onion boy;" and "I watched Schenck's face, and I knew that my suspicions were true." I said, what did you know was true, and he said, "That Schenck had connection with my wife the day before he came for the onions." I don't recollect any other reasons or facts upon which he based his opinion. These cases—the horse case, the onions, the toast, the veal, and the hog case—I remember no other, were expressly given as reasons for believing in the infidelity of his wife.

218 He said his wife was the best wife and mother in the world till, as he expressed it, she went bad. He said he loved his wife, and at that time she loved him, that his affection would be just as it used to be in the old time, and then she would go bad again. I ought to mention, that I asked him about his younger children, whether he had any bad feeling against them, and he said, "No, the poor little bonnies were not to blame for it in any way, he loved them as well as he did the rest of his children." He said he had not used any diligence in watching his wife; he thought that would be very dishonorable to be watching and sneaking about. He said he tried to reform his wife, by talking and reading the Bible to her. I asked him if he had ever sworn at her, and he said he had, but it was as God Almighty would curse wicked things, it was for her good. He told me he had built that house so fine and large to please her; that he himself did not care anything about it. I think he said she wanted the house in order to give more attraction for herself, she had told him so. He said that Filkins, Schenck and Cassell had always been friendly and intimate with him till this trouble, and since then they had not been. I think he said he had never intimated his suspicions to them in any way. There is one thing still further in proof of this suspicion of his wife; once he brought her down to the city, and bought her some things; he stopped at a hotel, I think the Metropolitan, and when he came in he found her crying, and asked what she was crying for, and she said if it had not been for that Filkins and Merrill difficulty, we never should have had any trouble; and that, he used as an additional argument to prove her infidelity.

219 The Filkins' and Merrill difficulty, he said, was the horse case. These things he communicated to me disjointly, as far as subjects were concerned; not as to sentences, which were always coherent. In speaking of his wife's virtue, he said that she was one of the best wives and mothers in the world, they loved each other as faithfully as any persons in the world ever did, but that at the time of that difficulty his wife took sides against him; and at the same time he brought up this matter about the Masons, in connection with Filkins taking sides against him, which all resulted out of this horse case. Filkins and Merrill were Masons, and were stronger in the lodge than he was; they had conspired against him and had got this man Schenck, who was not a Mason, to seduce his wife, and were determined to be revenged upon him for not paying Merrill seventy-five dollars.

220 He is a man who has considerable refinement of manner, and deports himself with a great deal of courteousness and dignity, talking very quietly; and as I have said, impressed me with his earnestness in all these little things, he spoke of, as being of life and death to himself. I asked him what his feeling was as to this trial, he said all that he wanted was simply to have justice; that he expected when this trial took place he had only to come in and state his case, and he should be acquitted. At the same time he said this with great appearance of candor, and as though there could be no doubt in the mind of other persons more than in his own. He never showed signs of regret at what he had done; it was necessary to be done; he had done justice, and all he now asked was that justice should
221 be done to him. He spoke of his children with the greatest affection. I asked if they were still affectionate towards him. He said, yes, but that it made the poor creatures feel so bad when they came to see him, that they did not come often. I can't recollect what he said in reference to his sensibility, or the mortification he would feel if he were considered guilty. It is possible that there were a great variety of things which he said, in this jumbling episodic manner which I cannot recollect.

It is well understood that it is difficult to define Insanity, or disease of any kind. Insanity is such a disease of the brain and nervous system, as incapacitates them for the proper manifestations and operations of the mind; it is a disease of the organ through which the mind manifests itself, that organ is the Brain, and, the Nervous System with its prolongations; the nervous and spinal cords extend from
222 and are subsidiary organs to the brain. I might perhaps confine the disease to the brain, being understood, that the spinal cords and other nerves are subsidiary to the brain—the brain being the centre of the nervous system. The function of the brain, is to manifest the mind. A disease of the brain is studied by noticing the changes which affect the organs, which act with the brain.

223 To ascertain the causes of the various phenomena, and trace them to their original source, is the object of every examination into the state of a disease. We have to understand the connection of parts, or Physiology. In studying the condition of the brain, we study the symptoms which are indicative of change, in the operation of the brain. So in this case, I proceeded to investigate the cause of certain peculiarities, which, professionally, I understood as a symptom of a diseased condition of the mind, or rather of the organ through which the mind is manifested. I undertook to account for the peculiarities by observing all the symptoms I have mentioned, the condition of the patient, his age, his temperament, condition of ears, eyes, secretion of nose, condition of pulse, heart, lungs and abdomen.

On observing these symptoms through all these sources, I am driven professionally to say that there is a disease of the brain.

224 All the physical symptoms that I know of were present in this case. I do not find any one adverse to derangement, they are all evidence of derangement taken together. I have made up my mind, that he has disease of the brain to such an extent as to interfere with the ordinary manifestations of mind, this we commonly denominate Insanity. As there may be degrees of severity in disease in the other organs of the body, so there may be in the brain itself.

225 In every case, and I have been frequently called upon to examine, I always commence with a doubt, I confess, so that I endeavor to have my mind free from any bias, and then aim by careful examination to arrive at the opinion, which I ultimately give; I have endeavored in this case to adhere to this custom, and to examine the facts, and the bearing of each one, and I came to the conclusion, not immediately, but positively at the end. I did not make up my opinion beyond a doubt at the first investigation; for instance, I would be very loth to make up my mind of the condition of the pulse at the first examination, but would examine it from time to time, and when I have observed that in connection with the other facts, then the conviction becomes profound and beyond escape. The symptoms I have stated indicated a chronic disease; acute diseases are manifested by much greater activity of all the symptoms. I have heard the evidence given in the case. My opinion is, that the facts being assumed to be true as stated, that the man has chronic insanity which has continued for a number of years, ranging in its degree of manifestation at times, as is true of all chronic diseases of the brain or any other organ. He told me, in speaking of the treatment of his disease, that he had taken mercury in large quantities for the purpose of salivating the glands, and without any effect.

226 There are very many diseases which are hereditary in their tendency, insanity is strikingly one of them. The fact that there has been insanity in the circle of immediate blood relations of the patient, is of the highest importance, in forming an opinion of the nature of the disease. In my opinion, the presence of Insanity in a brother is a much more important fact than the presence in the father, for this reason; the organization of the father and mother usually give rise to particular tendencies to disease on the part of children, these are much more likely to be alike in brothers and sisters, than in the father or brother, or mother and brother, for the reason that the two organizations are represented in the family; this is a common philosophical fact, and illustrated in stock breeding. The presence of Insanity in blood relations, especially brothers and sisters, is an important fact, because the concurrent causes meet in the children.

228 Diseases affecting the nervous system have different manifestations. A conformation, which in the father would result in paralysis, in the son might result in insanity; and where there is an affection of the nervous centre the manifestation of disease in the child might affect the brain, so as to produce insanity.

229 I have explained my idea that the organization of the child is varied by intermixture with the blood of the mother; the manifestation might be changed in its form, and still appear in the third and fourth generation, so as to show the peculiar kind of nervous disorder, which had existed before; what we call hereditary depends upon organization. The question of simulating or counterfeiting insanity, was a point in my investigation. I took great pains in the examination, and from my experience and reading, I would say it was a kind of insanity no man could simulate. This class of insanity cannot be simulated, and I saw no attempt in this case. A man who simulates insanity always uses incoherency, pays no attention to your questions, but goes off into rhapsody, but in this case there is no incoherency of words and sentences are formed perfectly. 230 There is no incoherency as to the subjects, which are suggested by what he is speaking of; no simulation in this can be possible.

I may say that I don't base my opinion merely upon these mental manifestations, I undertake to give them only the importance to which they are entitled; taking them with the other symptoms, the case became clear to my mind, and all doubt was removed as to the action of the mind.

It is characteristic of insanity that the manifestations of the mind are changed by the diseased brain. In this case from my observation of the man, the working of his mind as connected with his physical condition, was clearly observable. I became of the opinion that he had want of control over certain portions of his mind; that there was present what was technically denominated a delusion—a peculiar emotional influence developed to such an extent that it controls the rest of the operations of the mind. As far as this particular delusion is concerned, there seemed to be an entire revolution of the ordinary condition of the ideas of right and wrong. 231

In the power of reasoning from cause to effect, so as to see the validity of a reason, he was almost totally incapacitated. 234

The ordinary effect of the symptoms, which I detect in the prisoner, upon the judgment, in regard to subjects upon which the derangement exists is to weaken the power of mind or to pass it out from under the control of the volition or will.

235 The length of time of the growth of insanity depends upon the cause of the difficulty. When hereditary, the derangement may manifest itself slowly, gradually, and taking years, and when it is produced by slow changes in the structure of the brain, and from other causes, it may be a long period in attracting attention.

When it is noticed, it frequently happens that circumstances, that transpired previously, have had to do with it. Sometimes a cause may be such as to produce insanity immediately, as for instance a blow upon the head, or at other times, it might not develop until after a number of years; it depends upon the cause and its surroundings; a man may have it, yet if there are no exciting causes or surround-

ings it may not develop itself. So again, hereditary insanity may not develop itself until a particular age, for instance, the age when his father had the same malady; perhaps it may be slowly developed, passing through, ten, fifteen or twenty years, and come on gradually. As a general rule, the patients are characterized by sleeplessness during the presence of partial or general insanity. A simulator would be compelled sometimes to sleep; a truly insane man, even though of only partial insanity, will go night after night without sleeping. This sleeplessness is a very important point in determining insanity of any grade. There is some difference of opinion, but I believe the usual rule is, that a person with a disturbed state of mind is rendered more excited, and the disturbance is more strikingly manifested at night. I have observed that in Insane Asylums patients quiet during the day at night rave. I am unable to answer definitely how long any ordinary man under the influence of spirits can continue under violent and excited agitation, talking continually and excitedly, without sleep, the rule being that the patient speedily falls under one form of insanity called "delirium tremens."

I could not answer definitely how long a sane, sober man could continue in violent action upon a single subject without repose for a moment of time. It would depend upon the man's strength and power, but still a man would be likely to be exhausted in a few hours. It is characteristic of one particular manifestation of insanity to burst into sudden and violent passion upon slight provocation. The general powers of the prisoner's mind are affected by this disease, power of reason, power of judgment, power of choice, general subjects more or less. Loss of power is manifested through the brain; I would like to be understood professionally in one statement, when I say loss of power in a particular faculty, I mean loss of power of will over its manifestations. This loss of power is general in this case, not that there is a want of power of action—there may be increased action,—but a loss of power or management over it by the mind. A phase of hilarity rapidly followed without apparent cause by extreme gloom, abstraction and melancholy, is a symptom by which we arrive at the condition of a certain portion of the brain, which we call the emotional centre. With regard to the prisoner, I would simply say this man has a diseased condition of certain portions of the brain which renders the mind incapable of manifesting itself through the brain; I should call his type of insanity, a disease of the emotional centre, producing such a condition of the organ as a whole as to prevent orderly manifestations of mind under which term I include both will, understanding and consciousness. It would, perhaps, ordinarily be called "monomania," but I object to the term professionally, and I believe it is not now used by the best writers. I think there is no such thing as frenzy or raving madness without delusion, I do not professionally admit the definition of illusion and delusion being the same. In frenzy there is a general want of control over the operations of the mind by the

will, there is no such thing as connected thought, no coherency, no fixedness of mind in any particular channel. In the case of persons suffering from fever or other diseases, there is an entire want of coherency in the different phrases used, and a want of orderly action.

242 A man may be, when left to himself incoherent, but when his attention is called and fixed upon some point, the appearance of delusion will pass away entirely for a few moments and then when the persons attention is not fixed, his delusion will come again, and he will go off into incoherency. The conduct of raving madmen towards other persons varies; I have seen a man raving and yet under the control of some person. There may be raving maniacs, without any disposition to violence, manifesting it entirely by language; the muscular action of the body being but one mode of the manifestation of the persons mind.

243 I first had notice, and went to see this case three weeks ago, at Mr. Dexter's request; he spoke to me in the morning for an appointment in the afternoon. He said the prisoner was supposed to be insane, and he wanted to ascertain the fact; he had not himself seen him. He told me it was Hopps, who had murdered his wife, as I might have seen by the newspapers. He said nothing about Hopps' brothers for a week or
244 ten days after. My first examination was three week ago; my last the day before the trial. The first visit, Mr. Dexter and Mr. McComas went with me; I was introduced as Dr. Allen, a friend of theirs; there was nothing said that I came to examin him; the gentlemen called me doctor; he did not address any conversation to me as I preferred he should not; subsequently he addressed me as doctor.

245 It is a correct proposition, that different types of hereditary insanity may appear among brothers and sisters, or rather, that one type of insanity might appear in the father, another type in the son, another in the grandson.

It is not true that a parent with gout would transmit the scrofula, but it is true that a disease may appear in the parent, and an analogous disease in the children. The father has gout, it may give scrofula to the son, or chronic disease, or affection of the brain. The one heredit-
246 ary fact is the disease; one member may have a highly excitable organization, the other a sort of dementia; organizations will shade into each other. In inflammation both the immense activity and the diminished are the same condition.

247 I stated that the difficulty of the prisoner was a disease of the emotional centre, which affected the central organ of the brain, thus destroying the power of will. The emotional centre is situated in the base of the brain, in that portion of the brain extending from the upper part of the spinal cord to the cerebrum. The whole brain, in
248 this case, is affected, some parts in a greater, others in a less degree. The brain is composed of separate organs; one may be affected and the others not. Monomania is too indefinite; it has been a general, convenient term, but is not scientific. At times, in this case, the whole brain is affected, the local disease affects other portions of the

mind and impairs their manifestations ; like an organ with two or three notes out of tune, which are not noticed till these keys are struck, although they affect all the other keys in their vibrations ; so the influence of the afflicted part affects the others. Insanity is a disease of the physical structure through which the mind manifests itself.

There is blindness by the structure of the eye being impaired, and the want of perception is due to the structure of the eye, not to the light. So in insanity ; it is not that the mind is diseased, but the structure through which it operates.

There have been people insane and on a post mortem examination no disease of the brain has been found. The real change which takes place in the material body is invisible to any sense, it is of the molecules or atoms of matter. No act can take place without destruction of the material of the body, and where there is a change in the action of the body there is change in the material of which the body is composed, thus we can pass from scarcely observable and not observable changes shading deeper and darker, until we get the products in mortification and death.

Our knowledge depends upon induction, it is not sufficient merely to find facts, we must endeavor to find an essential relation between the effects, which observed closely give scientific and established laws. Invisible molecules in the brain can make a man insane, just as an invisible molecule in the liver will disturb that organ and destroy life.

I said the patient had a weak pulse ; I recollect two cases in which I examined the pulse of individuals of highly nervous temperament, who had committed the act which this man committed, and were approaching the time of trial. It is not natural, that the pulse of a highly nervous man, accustomed to the use of ardent spirits, and placed as this man is, should run to a high degree, without other circumstances. I found that while daily his general health improved very much, yet this rapid pulse continued. His ear was flattened, that is an indication of insanity ; this fact alone might pass unnoticed, except in relation to other things, but is an item to be looked at in judging of temperament. The rapid action of the heart involves a weak and rapid pulse, or the heart and the emotional centre are immediately connected through the nervous system. From the base of the brain, under this emotional centre, and in immediate connection with it, are nerves which pass downwards, being connected with the organs of the chest and abdomen, and connecting with another series of nervous cords about the chest and abdomen, which we call "plexuses." The connection of the brain and heart is through these nervous plexuses. It is a common thing for great alarm and anxiety to quicken the pulse. I consider the defendant to be laboring under local disease of the brain, producing disturbance of the emotional action or manifestation of the mind ; commonly called, he has mono-mania, "madness on one subject."

258 I never at any time thought the defendant had an appreciation that
he was liable to the penalty of murder, both from his repeated assertions,
and his manner which was convincing in its earnestness, that all he
259 wanted was to state his case and the court would justify him; at the
same time he seemed aware that he was going to have a trial and for
what, but was convinced of his acquittal. If he had stated his regret
for the deed in the same earnest manner I should say he had the con-
sciousness of what he had done. I base my conclusions on the facts I
saw myself.

This disease of the emotional centre would deprive him of the
power of will and choice to control his moral actions, not wholly, nor
at all times, since that would depend on the degree or extent of the
260 disease; it would deprive him of it on certain subjects. That the dis-
ease is not extensive is evidenced by the fact that in very many
particulars he manifests control over his will; the disease is in this cen-
tre, it does not extend to such an extent as to involve the faculties of
the mind in complete overthrow. When under the influence of this
particular subject, I should say he was entirely incompetent to make a
proper mental volition and act of will; his competency would vary
261 upon the extent and degree of his excitement. It is strong evidence of
a delusion to my mind, and not necessarily an exercise of simple will,
that when raging upon this subject, the patient on the appearance of a
neighbor whom he respected, should become calm, it would not indicate
that he possessed the power to control his will and acts, and to judge
between right and wrong.

262 I was not present at the examination of Ralph; I knew nothing
about Ralph until ten days after I examined his brother. I was in
Chicago the fourth of September. The effect of mental aberration is
sometimes to increase the memory, so far as the facts and events of a
certain period of time are concerned, sometimes to weaken or disturb
263 its accuracy. Memory may be present, and yet the man be not respon-
sible for his acts; without memory he could not be responsible. The
fact that prisoner came to this country poor, and by energy, skill, and
business habits had acquired wealth, and had been a good business
264 man until this act, would not shake my opinion, still, if he had these
business habits I should infer his faculties were affected to a small
degree. I gave no notice to the District Attorney, when I went to ex-
amine Hopps; the first time I examined Hopps in the Hall below,
afterwards in an upper room by ourselves; there were present at these
265 interviews the counsel and Doctor Rae, Professor of Anatomy in the
Rush Medical College, and a Practitioner of Medicine in Chicago, and
Dr. McFarlane, these latter I supposed to be there at defendant's re-
quest, as they seemed anxious to give him a perfect examination. I
never met the other Doctors but in the jail, till we came to this room.
266 The defendant seemed to have a great regard for his honor, pride and
self-esteem, but not in an offensive sense.

267 The different manifestations of the mind take place through particu-
lar parts of the brain. When these parts are diseased, the manifestation
of that particular faculty is disordered or diseased. An insane person may
have a knowledge of right and wrong and yet want a power of choice.
Having knowledge of the particular act he is doing, and being only a
mono-maniac, there are numerous cases when he can control himself;
he may know that what he is doing is wrong and can't help doing it.
268 What particular faculty is involved in local disease of the brain, is a
question for observation; this is true of both mental and moral mania,
as regard their mechanism in the brain, the distinction between them
is an aesthetical one; the mind is something outside which operates
upon and through the brain, the spiritual part cannot be diseased.

The cases are very rare where actual change of structure cannot be
detected after death, and more rare now than formerly, because obser-
269 vation is now careful and minute. We find after death alterations
which previously would have been entirely overlooked. The brain is
affected by the same simple physiological law of molecules, as muscle
or gland. The books are full of cases, and every man's experience
confirms the fact, that persons labouring under a delusion of a sensitive
nature will conceal and deny their delusion in the presence of unsym-
270 pathetic persons,—will even laugh and jest about it.

I made up my mind of the prisoner's state from observation, be-
fore I came into Court, and have heard no testimony to alter my views.
271 The dominant influence of his mind would give way to another emo-
tion on the introduction of a neighbour. Lunatics, even raving ma-
niacs, when you come up to them, will be quiet and come up to you.
After the intervention of a subject has been removed, the mind will
commonly go back, as it does in fever, to the old channel.

273 The very presence of delusion necessitates aberration, want of
274 power for understanding, comparing, and observing between right and
wrong. A delusion or false notion affecting a man's motives or life,
would go far to impair or overthrow the control upon the understand-
ing as to the difference between right and wrong, and the power of choice
between them. He did not say or do anything to make me suppose a
275 disease he spoke of was of recent occurrence, but when I, thinking it
recent, asked him, he told me promptly, it was when he was a boy
eight or ten years old. I have been examining physician for Insurance
Companies for a number of years; we examine all parts of the body to
discover latent disease; the average pulse of healthy adults is from
seventy-two to seventy-five; a variation from this would induce us to
look for disease. Insurance Companies are very particular upon this
276 point. In a healthy person, under sixty, if the pulse goes up to ninety,
and continues so daily, under circumstances of quiet or excitement,
we consider it indicative of disease; if excited merely by the emotional
powers it would speedily decline.

The defence called Dr. Henry Wing, who said in substance :

277 I reside in this city ; have been a physician for sixteen years ;
am now a lecturer and teacher of medicine, and a member of the State
Board of Medical Examiners of surgeons for the army. The philoso-
phy of the brain and nervous system are subjects of general practice
in my profession. It is the universal belief that "monomania" and
partial insanity exist ; that insanity is always a disease of the brain,
which is then changed in some of its conditions.

278 I have twice examined the prisoner. I saw him first November
25th in jail. I staid with him an hour and half, investigating his state
of health and examining him. I saw him again last Saturday week,
in the same place and under the same circumstances. In my first visit,
I confined my physiological examination chiefly to the pulse, which
I counted half a dozen times at various intervals, to find whether it
was uniform, and to learn what its character was under different mental
emotions, as we conversed on different topics. It was uniformly
279 irregular, the average varying from 108 to 120. I found great dif-
ficulty in getting his mind to flow in the channels, which I desired.
I made no inquiry, but judged him to be between 55 and 60 years.
His skin was thin, with an unnatural cadaverous appearance and un-
healthy moisture. At the first interview I found the pulse indicated
280 material lesion of some organ, and at the second visit I proceeded to find
what that organ was. The abdomen, though large, had no special dis-
ease, nor the lungs ; the heart had a feeble action, but no evidence of
special alteration of structure, I judge its muscular action to be feeble.
In a state of health there is a natural relation between pulsation and
respiration, there is an average of four to four and a half pulsations
to one respiration ; the prisoner had six to one, which I considered
abnormal, that is, it showed the existence of some vital disease.

281 The odor of the skin verifies the diagnosis of disease of the
282 brain. I first observed the bearing and personal appearance of
Hopps when I think he was not conscious anyone saw him. I
entered into conversation with him to find out his character, the
bent of his mind, his early influences. He told me that his mother
was a Methodist and that his father was converted by Wesley,
in England, and had a Bible which was presented to his grandfather
by Wesley. I got the impression that his mother outlived his
283 father and was affectionate to him. He seemed to have pride in their
memory. He said he belonged to no church, but would help all. This
narrative was intermingled with a history of his personal wealth ; it
was difficult to confine him to one topic, as suggestions would lead him
off the subject before it was finished. I asked him if he had had dis-
ease of the liver, seeing his abdomen so large, he said he had in Ver-
mont, and told of his treatment, which led to his experience in the woods,
284 and ran on to chopping. I had to renew my conversation to get it

complete. He said he was salivated at that time, but was always able to do a large amount of business; he thought he had some nervous affection of the mind, which first occurred in Canada, that he employed a good many agents there and lost a good many night's sleep, and that these nervous spells had troubled him since; I could not understand his descriptions of these spells. Talking of his history, he said he had never had but one trouble and that related to his wife, and was connected with a horse difficulty with one of his neighbors; his narrative was confused and I had to ask a great many questions; his neighbours wronged him and conspired together against the virtue of his wife.

285 He said one of the arbitrators, who had desired he should pay half the value of the horse, had maliciously told him he should not pay anything, and that he could not have so changed his mind without being party to some conspiracy, and he was satisfied it related to the virtue of his wife. As an additional reason, he said his wife had confessed her guilt; once when he came to Chicago to sell some wheat he left her and found her afterwards in tears, and she said, "if it had not been for that Filkins' difficulty, we should never have been in trouble." I asked him whether she admitted it in any other terms; he said "oh! no, not at all." He said his wife would sometimes become alienated from him.

286 He spoke of her general character with a good deal of pride, that she was of unusual virtue and abhorred wrong. He said he did not know what arts this man had used to alienate his wife. He mentioned a toast offered by Filkins; and he said that his interpretation of it, referring to her infidelity, his wife confessed was true. After the birth of a boy, in which he had some pride, Filkins and he were together, and he said "its my toast," and Filkins said "the men who get boys are the men, the rest are teasers." He spoke of this to his wife and she said, "oh, he did'nt mean that, he meant the other way."

He was once selling veal with Filkins, when Filkins said, "these women are nice things after all," and he said he knew by that, that Filkins had had connection with his wife and it was full proof of her infidelity.

287 The action of his mind in conversation is clearly insane. Towards his children, he seemed to be a man of kindly feelings. About the killing of his wife he said that he knew it, and that he had done right, even if they hung him; that was what he wanted to do, and he should do so now. He said that after the killing of his wife, he slept on the lounge that night, that next day he went to see his wife, who was still living, and that he had no feeling of revenge.

In his character there was a marked tenderness and disinclination to violence, and a want of recognition, that in killing his wife he had committed any act of violence; and I could feel that while he said this,

288 his pulse was not affected. The logical part of his mind was totally inadequate. I thought he seemed to feel a sort of elevated consciousness of rectitude, when I saw him walking across the hall. I have no doubt he is insane; it is a case of slowly developed hereditary insanity; his

289 form of insanity is seldom met with but when hereditary, and the im-
 portant question then is, the history of the family, as there is a kind of
 hereditary certainty in disease. I have heard part of the testimony;
 if I found insanity in the blood relations it would have a strong im-
 pression to form my opinion. His is a case of slowly developed
 insanity,—the past four months cannot have made any great change
 for better or worse. His removal from all the excitements of life
 290 would perhaps be favorable to his improvement. His temperament is a
 nervous, bilious temperament. It would be impossible for a man of
 his knowledge to simulate this malady; he seems to be perfectly frank
 and honest. When a man desires to simulate insanity the predominant
 feeling is a desire that others shall regard him as insane, he therefore
 puts on the manifestation of insanity, to those he is acquainted with; men
 who have not studied insanity would not regard his type as insanity.
 The common symptoms of "monomania" are, that it first manifests
 291 itself as a peculiarity of character, the patient is called singular, he
 has periods of excitement, when he does not sleep and when he is gen-
 erally insane, which is followed by a want of repose till the excitement
 wears off. It is a general rule that the antipathies of the disease are
 against those to whom they are most attached. Whenever a disease
 exists, any violence suffered by the constitution in proximity to the
 diseased part, either induces a new disease, or generally increases the
 existing one; a blow on the head would magnify a disorder of the
 292 brain. There are two periods of life in families, in which disorders of
 the nervous system would be likely to manifest themselves, one from
 fourteen to eighteen,—the other forty to forty-nine.

Only Mr. Dexter and Mr. McComas went with me the first time to
 the jail. Mr. McComas and Dr. N. S. Davis, Professor in the Lind
 University, went with me the next time. Mr. Dexter asked me to go
 293 the first time to see the prisoner, about whose sanity there was a ques-
 tion. I don't know when he was put into jail; I asked him about his
 health since he had been in jail. I do not think a farmer accustomed
 to out-door exercise, when put in a cell alone, would, on that account,
 294 exhibit the symptoms he does. Four months confinement would pro-
 duce changes in the skin, but not such as I see in the prisoner. Con-
 finement in jail and changes of diet might produce a very great change.
 I was not told before the examination that there was insanity in the
 295 family. I assume that he has a brother insane, which I consider an
 important fact. Mr. McComas told me this, I think; I made up my
 mind at the first visit. I cannot locate the disease in a case of "mono-
 mania" with precision.

296 I do not use the term "emotional centre," though used by men of
 high character; the boundaries of it are not distinctly located.

The mind manifests itself through the action of the brain; if the
 brain is disordered, then the manifestations must be morbid. I cannot
 tell what particular manifestation must be affected by the locality of
 297 the disease. The brain ordinarily means all that is contained within

the skull ; I could not with precision locate this disease ; I do not understand that the whole brain need necessarily be affected. It would not make any difference, in business his being an insane man ; insane men are often quicker witted than other men, and than they were before, and sharper at a bargain.

298 I presume that probably on the 30th of June he knew the act he was committing, but I think he was entirely incapable of knowing the civil consequences of that act, and whether it were right or wrong. He might have a correct appreciation of the act, but not in connection
299 with this subject. Abstractly, he might think it wrong to take human life, but not if under the influence of these feelings, then he thinks it right to have taken his wife's life. When he approaches this subject, the balance of his reason is lost in a moment. One moment he says his wife was the best and purest woman in the world, and then he says he
300 did right to kill her.

I have endeavored to form a conscientious opinion, and I am satisfied I could have disturbed the pulse of any sane man by conversing as I did with him, on the prospects of his execution and the death of his wife. I have not examined the cases of hardened criminals ; I do not consider want of appreciation of the act as evidence of insanity. He did not say anything to me about his wife having taken sides against
301 him in the horse case. I never was with Dr. Allen. Eccentricity is not generally or necessarily the indication of incipient "monomania," it is to be confirmed by developement, but is no evidence of insanity. As to the extent of his mental unsoundness, I make up my mind from
302 physical symptoms, that he has disease of the brain, and from the mental exhibition, I estimate amount and quality. There may be disease of the brain without manifest insanity, this is not common. I did not notice his ears ; I noticed the general expression of his face. There may be disease of the brain without insanity, but then the symptoms would be connected with other symptoms which would declare the nature
303 of the case. I could not see manifestations of aberration of mind, unless I saw the mind act. I should think that the prisoner committed
304 the act with a manner somewhat excited but not highly so, and with a deliberate purpose. There is such a thing as an irresistible impulse to do an act which the subject knows to be wrong, to kill some one, even his friend ; he may ask others to restrain him, and has not power
305 of self-control. My opinion has been formed from reading and reflection. We do not acknowledge any work as absolute authority on insanity, as medicine is a progressive science. Beck's Medical Jurisprudence is a work of high authority. I do not know Ewell's Medical
306 Legal Evidence. Mr. Dexter told me he desired to form a correct opinion of this case, if the man was guilty he was willing that justice
307 should be meted out ; he did not desire me to render any opinion as to the cause. There are diseases which are obscure and about which different opinions may be formed, and there is no case about which physicians cannot differ, but in this case the conclusion is plain.

308 I examined the liver; I considered it was not the seat of any
organic disease. I think, I should, without a reasonable doubt, consider
the man insane, from the physical examination alone. Mr. Dexter
309 asked me to visit Hopps for the purpose of forming an opinion, he said
he did not intend to commit himself to a defence until satisfied that the
man was innocent; he would not be identified with it on any other
terms. Mr. Dexter introduced me as Dr. Wing.

The defence called Dr. N. S. Davis, who said in substance :

I live in Chicago; have lived here since 1849; am a regular prac-
310 titioner of medicine, a regular physician and graduate. I have been
connected with a medical college in this city since I came here, except-
ing one year, as Professor of practical medicine, and clinical medicine
in the hospital; I am connected with a Monthly Journal, the "Chicago
Medical Examiner."

I know the prisoner, but not before he was confined in jail; I was
311 requested to call upon him in prison and examine him, by Mr. McCo-
mas; I went in company with Dr. Wing and Mr. McComas. I en-
quired pretty closely with regard to his previous health, and carefully
examined the condition of his blood and his pulse. From the history
he gave of his previous health, it appears he suffered much from indi-
gestion and constipation for a good many years; there were periods of
palpitation of the heart and dizziness in the head; the secretions of
312 the kidneys were not natural most of the time, but scanty. From his
description, I recognised his urine as diseased. For a week previous
to the examination, he said his health was better, his indigestion im-
proved. He spoke of his constipation after he came to the jail; and
said he suffered much from bad feelings in his stomach and side. I
313 found his skin dry, but of natural temperature; his pulse small, weak,
and decidedly more frequent than natural; I think it ranged between
90 and 100.

The region of the liver and spleen seemed fuller than natural. By
applying a stethoscope, I discovered no evidence of diseased lungs; the
hearts' action was weak and quick, but the sounds natural; the temper-
ature of the heart was higher than the other parts of the body and un-
natural. His manner was quick and excitable, not as though he was
disturbed by excitement, but as if he was moving from some nervous
impulse; his manner of speaking was the same, he talked rapidly; the
314 disposition to wander off on side issues, as if he forgot the main topic
he stated, was prominent; this was so on all subjects; sometimes he
was a little lost in his expressions, so that before he could express him-
self the idea was lost. I conversed with him a little on his prosperity
and his life. He mentioned his jealousy of his wife; the only cause he
assigned for it was a difficulty about a horse, in which his neighbors
315 took part. He stated no fact, but only general allegations, that some-

- body had taken liberties with her; he did not say who. He did not speak of any time when he was at the Sherman House, but said, when I asked for his reasons for suspecting the infidelity of his wife, that once, when in the city, he found her weeping, and he asked what was the matter, and she said, "if it was not for the horse difficulty they might be very happy," and this he regarded as suspicion of criminality. He did not say anything to me about Masons at the Sherman House.
- 316 I examined his countenance carefully. His manner was singular and excitable, and showed decided feebleness of mental action; his laugh struck me as indicative of much mental impairment, approaching "dementia," an idiotic sort of laugh. I formed the opinion that his mind was decidedly impaired and unsound. I should suppose the duration
- 317 of his disease to have been a number of years; the change has been very slow. I never conversed with Dr. McFarlane, Allen, Smith or Parker, with no one in the city but Dr. Wing, on this subject. The fact that he was a shrewd business man, accumulating property would not diminish my belief in the least in his insanity. The excitement produced by derangement in its incipient stages, before it assumes its strongest forms, is undoubtedly for years misunderstood by neighbors and friends.
- 318 The fact of the insanity or "dementia" of a brother, would certainly have weight and tend to confirm the opinion I have expressed of the prisoner. The condition of a daughter, at the age of sixteen, growing rapidly very tall and thin, exhibiting nervousness so as to be unable to see strangers, having a twitching of the face, and sometimes St. Vitus' dance, would have less influence, as at that age there are other causes which might intervene to explain it.
- 319 If at the time of killing his wife, and subsequently to the time of imprisonment, the prisoner seemed totally indifferent to all feelings which would naturally arise in such a case, showing no sympathy and a stolid indifference; I should regard it as additional evidence of weakness and impairment of mind. I was informed before I saw the prisoner
- 320 that the question of insanity was important on the trial. The fact of his brother's insanity was never alluded to. I was never called to administer to his wants as insane; I have lived in the county thirteen years and never heard of the man; I was not called upon to testify at any inquest before the County Court in August last. I have
- 321 not been requested to see the brother or girl. Mere bashfulness of a girl before strangers, would not of itself be evidence of insanity, nor a nervous twitching and convulsion after her mother's death a very
- 322 strange state.
- 323 The Defence called Dr. Robert Rae, who said in substance:

I am a physician; have lived in Chicago eleven years; am in general practice, and a teacher of medicine in Rush Medical College.

Physiology of the brain and nervous system are subjects of general practice in my profession. "Mono-mania," or partial insanity is believed to exist in our profession, I have not the least doubt of it. It is the general, and also my opinion that insanity is a disease of the brain. I have seen and examined the prisoner twice, once on Tuesday afternoon, and once on Thursday afternoon; my examinations were rather conversational, noticing from conversation the condition of his mind. I made no careful examination of his physical condition.

325 The ordinary pulse of a healthy man, aged fifty-three is about seventy. The rapid running of a pulse from 90 to 120, there being no apparent organic or chronic disease in the lungs, liver, or heart, would indicate the cause to be in the brain and nervous system. Insanity, like other physical peculiarities, is transmitted from parent to child.

326 My conversation with the prisoner was rather confused; his mind
327 showed a disposition to wander, I could not on this account detail the conversation; he seemed ready to converse; his wife was one of the first subjects that came up, and there seemed to be in his mind an anxiety to justify himself for what he had done, and he spoke something about a cow and calf; that he went late one night a mile or two a circuitous way to get, and when he was through he left it and said nothing more about it. He mentioned a law suit which had originated about a horse, and arbitration, and that the difficulties grew out of that between his wife and himself; and that his neighbors from their dislike on that account to him, undertook to have his wife seduced in order to punish him. From his mental peculiarities, his high rate of pulse, unaccompanied by disease in the vital organ, I should think, without doubt, the
328 prisoner was insane. The fact of insanity in the family would confirm my belief; I merely looked at his temperament; a blow on the head might excite it, if there was hereditary insanity.

330 Mr. Dexter and Mr. McComas introduced me as Dr. Rae; Dr. Allen was there; my object was to form an opinion of his state of mind; I did so by conversation and the state of his pulse. Mr. Mc-
331 Comas conversed with him occasionally. I think he said he slept better now than when he came to jail. He said his wife was one of the best women in the world, that he loved her dearly before she fell into these bad habits; he referred to her faithful, industrious and domestic
332 habits. The calf and horse stories I recollect as evincing insanity. I was not in the jail with Dr. McFarlane; I was there Thursday last, neither attorney was present.

333 The Defence called Dr. Milton Parker who said in substance:

I reside in Chicago; am a regular graduated physician; have practiced about twenty years; I have studied insanity and mental diseases. I conversed with the prisener to ascertain the state of his mind,

334 and made a physical examination of him some four or five days ago
 before the commencement of this trial, I had been requested to do so
 much earlier. My conclusion was that the brain was diseased; that it
 produced morbid manifestations upon the mind; I regard him as
 insane. I have had a secret case of "monomania." The person may
 335 appear perfectly sane, unless he acts upon the delusion, it is impossible
 for others to tell of its existence. When company comes, in the case
 I refer to, in which there is no doubt, the patient can talk upon literary
 or any other subjects, properly and logically. I have seen a patient
 perfectly sane through the day, and insane at night; demean himself
 with propriety and elegance, and the change take place soon after, and
 336 baffle for days together the observation of friends as to whether he was
 insane or not. Insanity is purely the result of morbid action of the
 brain. I have no doubt that the defendant's is a case of chronic in-
 sanity. Mr. McComas asked me to go to the jail, I went alone; he
 said he wanted me to examine the prisoner mentally and physically;
 337 the question was the insanity of Hopps. I drew my conclusions from
 his belief in the reality of certain facts of which he adduced no proof,
 nor anything that had any relation to it. I talked to him in the pres-
 ence of counsel. He talked much of his wife, and of his former life,
 I might have asked him a few questions, he seemed inclined to talk
 338 upon these topics. A man, I think, could not have all his physical
 symptoms, and not have aberration of mind; he might have some and
 not be insane. I would not like to draw a conclusion from physical
 symptoms alone, as they might occur from other causes. It might be
 339 a bare possibility, that a man might have all the physical symptoms the
 prisoner has, and not have disease of the brain. From his physical
 symptoms, I should say the external portion, the convolutions of the
 brain are affected, as distinguished from the centre of the brain; I
 think his mind is affected at the same time, and these are the organs of
 the mind. If only one of the convolutions was affected he might not
 be generally insane. The brain may be supposed to be a congeries of
 340 organs having distinct objects and functions, and there is one of them
 affected, and therefore a manifestation of that organ is diseased. I
 341 have heard of an emotional centre. I don't think that his combination
 of symptoms could exist without sufficient amount of disease in the
 brain to affect his mind. His pulse at the most was feebly and quick,
 and at the carotid arteries it was much stronger, and nothing but in-
 flammation of the brain could produce that result.

342 Mr. McComas only was with me; he talked some with the pris-
 oner. The case I before alluded to, was an actual case of confirmed
 monomania. I hold that the mind cannot make any manifestations in-
 dependent of the brain; the brain is the instrument. The mind is a
 343 totality, and in its manifestations must subject itself to physical laws.
 I have known a man after having his skull broken live on with a sound
 mind. I never knew the defendant before; I designate his disease
 344 "monomania." The disease in this case may be in the central portion

of the brain and the other parts be sympathetically affected, as the tendency of disease is to spread.

345 Sometimes in the case of a fracture of the skull, the faculty of memory is impaired. The affection of one part of the brain would affect all more or less; the injury might be so slight as not be manifested in a decided way.

The defence called Andrew McFarlane, who said in substance :

I live in Jacksonville; have been a physician twenty-five years; lived before coming to Illinois in New Hampshire; am Superintendent and Physician in Chief in the State Hospital for the Insane; that is
346 now my sole employment. I had two interviews with the prisoner last Wednesday; one in the morning at about 10 o'clock, which lasted almost two hours; the other from 3 to 4 o'clock. Mr. McComas accompanied me; at first I intended to go alone, that I might attain his condition of mind without any bias from persons then present, but a gentleman with whom I was in consultation suggested that the prisoner
347 had jealousy of persons with whom he had no acquaintance, who made inquiries,—so I went at my preference, with Mr. McComas, and at my suggestion was introduced by him as a casual acquaintance, a Mr. Brown.

I made no special physical examination of the prisoner; my attention was directed to those matters of observation, which we passed
348 in the outward appearance of any man suspected of mental disease. It is well known, that mental disease imprints upon the outward appearance certain signs; these signs in the case of the prisoner are: First, a mixed temperament, nervous and bilious, nervous predominating. Temperament is an important consideration in insanity, as insanity, especially inherited, chooses particular temperaments. His
350 countenance was a matter of study to me, as indicative of the mental condition of the man. He has but three expressions; the first, of blank stolidity and immobility, which did not change during a narrative, except
351 when he showed a countenance, expressive of his profound conviction of the truth of what he was saying. He has but one smile or laugh, hardly to be called "idiotic," as there is too much intelligence in his countenance for that; but the laugh of a man, whose mind has lost
352 some or its natural force. The pupils of his eyes are immovable—do not change with the action of light; I believe his eyes are out of the dominion of his intellect, and under the dominion of his passions; I could discern something in his eye which was "fiendish," the lid of the eye being drawn back over the globe and showing the white all around.

In a great range of mental operation the prisoner's mind shows but small departure from the natural condition; I should think upon mat-

- 353 ters of common concern and general subjects, the operations of the mind are very little disturbed. Upon trains of thought, upon which his mind is diseased, it works with difficulty, and although he is intensely interested in giving his narrative, it is difficult for his mind to act continuously in that track, and to get on another subject gives relief.
- 354 On being introduced to him, I affected surprise that "this gentleman could be a prisoner," which necessitated his telling me, with apparent interest, how he came to be there, and the history of his life; my apparent interest and surprise kept him pretty closely to the narrative, except the fugitive cunning, which I mentioned. He told me of a diseased horse, which, while hired, died upon his hands; that the arbitrators, Filkins and Cassell, made him pay half the value of the horse; that before this they were his friends, but now endeavored to injure
- 355 him by the "Free Masons." They intended to injure him by one Peter Schenck's seducing his wife. Her want of sympathy for him in this horse matter led him to believe her unfaithful. The horse case was the first proof of his wife's infidelity. When I asked whether he had taken any steps to ascertain the actual fact of his wife's infidelity, he said he abhorred underhand measures, and did not wish to hurt the feelings of innocent persons—Mrs. Filkins, I believe. Another matter was the Filkins' toast—an obscene toast given by Filkins on the birth
- 356 of one of his children, which he interpreted that Filkins would not have given it, if he had not been possessed of secrets (through Schenck) of his marriage bed. Another ground of proof was the remark of Filkins, when he was bringing butter into town, "these women are very comfortable creatures." These reasons impressed me as entirely the creatures of the prisoner's imagination. The prisoner also adduced other facts, the onion story upon which he placed great stress.
- 357 Schenck was to have some onions, and Mrs. Hopps, (Hopps being away) showed them to him, and afterwards Hopps actually measured them out to him. Some months after, he said, Schenck called, and to "give him a home thrust," I said "this is the little onion boy," and then I knew by his countenance his guilt. Mrs. Hopps then came out, and I knew she came out to close Schenck's mouth. He said he thought this "was as much as spoke volumes." Hopps' voice, like his countenance, however great the interest of his story, never changes, except
- 358 when he has reached one of his conclusions, e. g. his wife's guilt, when it drops into a pitiable monotone. It seems from his expressions, "that his wife is going on from bad to worse," that each proof has still greater force in his mind. The last instance of his wife's infidelity, was in relation to a German, who worked at his house, making cheese,
- 359 who, he thought, had commerce with Mrs. Hopps in the cellar. When he had stated these facts, he said in the piteous monotone, "and indeed with almost everybody," as if his wife's infidelity was indiscriminate. These are the principal facts of my conversation with him; I noticed no difference in his manner in the forenoon or afternoon. My whole

idea of this case may be embraced in the words, "insane delusion,"
 360 that is, a belief in the reality of things or circumstances which
 have no existence, according to any probable experience or testimony.
 All definitions of insanity must necessarily be obscure. In the year
 361 1800 the idea of Robert Fulton of a steamboat was called a delusion
 and proved afterwards to be a fact, so a delusion may be such to a
 362 man and yet afterwards prove matter of fact. I think a man believing
 in an array of circumstances, which are contrary to universal expe-
 rience and common sense, untrue and impossible, the result of a fixed
 belief which is irremovable by any argumentation, would be laboring
 under a delusion. I believe the prisoner to be laboring under a delu-
 sion with regard to the facts, although the facts could exist.

363 One night, he told me, he was sleeping at the Sherman House, and
 during the night he heard some persons in an adjoining room going
 through the Masonic ceremonies, which he, as a Mason, understood;
 that from the beating of the triangle he knew it was the burial service,
 but there was some mistake, as he heard a woman's voice, who could
 364 not be in a Masonic Lodge. He said he went home and put himself and
 house on guard against the attack of the Masons. I am satisfied this
 365 was, and that is what I mean by a delusion.

I should suppose his to be a chronic case of insanity of long stand-
 ing. An insane delusion has a far greater force upon the mind than
 the rational conviction. A case occurs to me of a man confined at
 Jacksonville, who had committed no crime, but believed the Sheriff was
 going to hang him; so strong was the delusion, that wrenching the bars
 366 from the window, he jumped from the third story and was killed. A
 man under the force of an insane delusion would put his hand in the
 fire to save his soul.

Delusions are as varied as the imagination of man can conceive
 or suggest; there are hardly any two insane delusions alike; even in
 367 the case of relations, who are insane, the delusions are entirely different,
 and whether a man squanders his property, thinking he owns the Bank
 of England, or kills his wife, thinking she is a prostitute, one delusion
 368 is not stronger than the other. The prisoner's is a remarkable case of
 a clear unmixed delusion. It is rare to see an insane person with so
 deep running, and yet so narrow a delusion; the depth of his delusion
 is greater than that of a fourth part of those in Asylums, and yet few
 would be found in Asylums with the same general clearness. The man,
 I instanced, who killed himself was of precisely the same state of mind
 369 as Hopps. The care of the insane, with all their physical diseases has
 been my exclusive business between sixteen and seventeen years. Dr.
 Allen addressed to me two letters, the last on Saturday the week before
 last; I reached here Tuesday night; I received no other communi-
 cation from any one; he did not meet me; I came under voluntary
 370 engagement. My first letter from him was a note giving, as is profession-
 ally usual, the facts of the case, that I might be induced to leave my reg-
 ular duties. I estimated, by request, my necessary expenses at \$50, my

371 salary is paid by the people and my time is theirs. I came, as I knew
it was probable a subpoena would be served upon me; the second letter
on Saturday, week before last, said the hearing would come on at an
early day and wished me to come on, without further ceremony. I ar-
rived Tuesday night; nothing was told me, at my request, but the facts
of the case. Mr. McComas, I think, suggested that I had better not go
alone. I saw the prisoner walking in the main Hall of the jail; Mr.
McComas called and he followed him to a large room up stairs. Mr.
372 McComas remained in the room during the entire interview, but was
not near, except at the beginning of the conversation. I would not
have relied for my conclusion on the physical appearance of the pris-
oner alone, I could not have formed a satisfactory conclusion without
373 hearing him talk. I was introduced at 10 o'clock in the morning; he
was in his shirt sleeves; I think he did not shake hands. I first ad-
dressed him, interrupting a conversation with Mr. McComas.

374 Every individual has not a mixed temperament, some have exclu-
sively nervous. There is a difference in laugh; there is a laugh
peculiar to intelligent and one to demented persons. Power of con-
475 centration differs; there is however, a certain standard which indicates
a sound mind. It is a peculiarity of dotage to go into minutiae. I did,
emphatically place particular reliance upon his narratives, as evidences
of his delusion.

376 There is a difference between the Sherman House transaction, and
a bad dream, but that transaction derives its weight from its connec-
tion, the mere fact of hearing the Masons might be a dream; but the
377 fact of arming himself and his friends disproves that. If at the time
of the Sherman House affair, he were on the verge of delirium tremens,
it would make a difference, with this qualification, that the hypothesis
378 proves nothing, unless a case with all the facts is before one; the fact
also of his having at that time an actual difficulty with the Masons
would make a difference. Even if the horse difficulty were a fact, still
to base such a delusion upon such a premise would be a delusion;
mingled malice and jealousy could not produce such an effect.

379 Jealousy and insanity are distinct, but no jealousy could have driven
Hopps to this excess.

Question—Are you acquainted with the tale of Othello as given
by Shakespeare? if so, state whether the character there delineated is
an insane man or a jealous man.

The Defendant objected to the foregoing question which objection
was overruled by the Court, to which ruling of the Court the Defen-
dant then and there excepted.

380 In the play of Othello, where the handkerchief is held up before
Othello's eyes as proof of infidelity, it is clearly Shakespeare's intention

381 to carry his subject beyond the bounds of reason, there was a flash of
 382 insanity. There is a class of physicians who are carrying the subject
 of insanity forward, but they do not think that those who have strong
 idiosyncracies, and commit some great crime are insane; no writers of
 merit believe in moral insanity. The opinion of Doctors Parker and
 383 Gilman, that Huntington was morally insane, has been scouted by the
 profession. I have read Dr. Rae's book and regard it as fair authority.

384 A person with a correct abstract idea of right and wrong, may yet
 385 consider himself justified in an act; in that case he should not be pun-
 386 ished. If after the act and in relation to the act, he expressed regret,
 I should, with some qualifications, regard it as an evidence that he
 knew he was wrong; the secreting the knife would be no evidence.

387 The delusion would impel the act irrespective of place, circum-
 388 stance and employment. I do not think at that time, liquor alone would
 389 have induced this act; nor would his being drunk or sober, in my esti-
 390 mation, make any difference. From the testimony, and what I know
 of the prisoners's mind, I think there was preconceived justification.

391 One witness said he expressed an intention to kill his wife. Liquor
 392 acted as a general excitant, making his idea of killing more positive
 393 and clear. Insanity is the parent of delusion, and liquor may have
 394 reacted upon the insanity independent of the delusion. As an
 395 excitant liquor acted, but in producing the murder at that time it acted
 only as a secondary agent. Liquor acted upon the disease; despite
 the fact that he treated his wife uniformly well when sober, yet liquor did
 not act primarily. Even if a temperance man he would have killed
 his wife. A homicidal act would be the natural result of his threats.

396 His disease was a paroxysmal one; at such times his appetite for
 397 liquor was increased, so that it is difficult to say how much was owing
 398 to liquor—how much to the fundamental delusion. I have had much
 399 experience in cases of men who have committed homicide; I never
 400 knew the McNamee case; those who commit the act in drunkenness
 401 through grudge, show contrition; persons sometimes nerve themselves
 402 with liquor. In the case of a murder through hatred, I should expect
 403 contrition and remorse. I should think any man of ordinary constitu-
 404 tion would, the next morning, see the enormity of his act, even if he
 had contemplated it and had an old grudge.

Mental insanity is where insanity is confined entirely to the intel-
 lectual operations, where it is simply a disturbed state of the process of
 thought, without any great moral perversions. Those who hold the
 doctrine of moral insanity, a doctrine abhorrent to me—hold that a
 man may be corrupt in his moral nature. Large numbers of the insane
 have mental as well as moral perversion—pure mental perversion is not
 common.

405 Liquor produces a general excitement of the passions, above all,
 anger and resentment; this anger is diffusive—extends to all alike;
 but in insanity, especially insanity with a delusion, the resentment is
 special against a particular person.

396 When a man, excited with liquor, returns to precisely the same brain
delusions, insanity may be suspected, but when he is only generally
397 excited it is the legitimate effect of the liquor. The drunkard is for
the time being under the influence of delusion. Abstractly an insane
man may have the idea of right and wrong, yet be moved by an uncontrollable
398 influence to do acts which, on general principles, he knows are
wrong; he might think he had a sufficient justification to kill, and that
the laws of his country do not take this into sufficient consideration.

399 In one case an individual may reason from what he supposes to be
a reasonable justification; in the other he is impelled by a recognized
disease of the brain. In the first case he would be criminal, although
400 he might feel justified. An act of homicide committed in a rage admits
of no reasoning, yet a man in a passion might know whether it were
right or wrong; it is the passion of a moment, not the reasoning justification
which induces him to think it right. I understood Hopps' regrets to be general
regrets at the whole transaction, at his wife's infidelity, at the circumstances
of his family, regrets that the act had to be done. I said I understood Mrs. Hopps
was a very amiable, excellent woman; he checked me, saying she was a very
402 useful woman, necessary to a family, not allowing me to carry out the idea implied in amiable;
then he said it was a pity it ever happened, that she ever went bad. I should
403 think there would be a difference of contrition for the killing of an enemy
and a cherished wife. Liquor revives old grudges, and makes an insane man
more insane; it acts as a general excitant.

The Defence called Dr. Dyer, who testified in substance as follows:

414 I was a physician in this city for twenty years; it is now six years
since I have practiced. I have known Mr. Hopps about twenty-four years;
I have known him casually; used to meet him in the county at divers times;
never knew him very intimately. Sometime anterior to my removal to town
in 1856 he used to meet me, stop and converse; then I thought he was a little
415 crooked in the head. There were two or three instances; they did not
make a very strong impression on me, and perhaps would not have been
recollected but for circumstances that transpired subsequently; for instance,
once he stopped to talk politics—he stopped me on the sidewalk, and pitched
into the opposite party in so severe a manner as to strike me as rather
inconsistent; it struck me as a little crooked in the head; I should say
it was an aberration of intellect. Once before and once after that time
he met me, and seemed to be very glad to see me; at first I thought he
was mistaken in the man, but he said he had some business with me,
and then he would walk along with me and slip into some place, and when
416 he came out would not say anything about the business, and he treated
me afterwards in the same way. During the time I was building the

Court-House I had a conversation with Filkins as to the mental soundness of Mr. Hopps. I saw Hopps once after this, and my attention
417 was more turned to it by the conversation with Filkins; it was Joseph Filkins; the impression was that Hopps was a little crooked; I looked after him as he went down street and thought he acted like man who was not quite clear in his intellect. Hopps is not a patient of mine; he may have consulted with me in early times. I have no means of
418 knowing whether he had been indulging in liquor; I never suspected him of it, and never heard it; my attention was not called in that direction; it did not strike me he was in liquor. The third interview was after I had talked with Filkins.

The Defence called Henry Merrill who testified in substance as follows:

421 I know William and Ralph Hopps. Myself and Van Vlack got up a petition to secure something for the livelihood of Ralph from the estate of William or some other parties. I understood that William had received something from England belonging to Ralph. Van Vlack and myself first started the idea of having a conservator appointed. Ralph wished me to do it for him. William Hopps nor his counsel in this case neither asked or advised me to get up that proceeding. The
422 object was merely to secure Ralph's interests. Van Vlack and I got up the petition to have a conservator appointed to get what William owed him. Ralph requested us to do it but did not say anything about his insanity; he had been talking about doing this before William was arrested. Ralph asked me about it several times and I spoke to William about it at the April election. After William was arrested he
423 thought that was the time, if ever he was to have anything, to get it before the trial came off; he was afraid he might lose it. Ralph did not go and see William because they had had some little difficulty. I heard William say he was owing Ralph. Ralph had a lucid interval; he did seem anxious that measures should be taken to secure the debt; he
424 asked me to go to the County Court and take some proceedings before this trial came off. I did not know he was insane. We knew that something was the matter with him. We thought he was not exactly right, he was simple. I have lived near him and worked with him twenty-two or twenty-three years; he is a man who apparently was never capable of doing business himself. I always understood that he lived with his brother from a boy, and when he became weak-minded his brother did his business; when he left him he requested me to do
425 it; I did it. I went to Mr. Eldridge and he suggested that we should take him before the Court and examine him, and have the doctors examine him; the doctors did not pronounce him insane. The doctors were Fisher and Blair; they had an examination before court and jury; Mr. McComas was present. William Hopps and I have been on

426 friendly terms, except some little trouble; when I spoke to William he
said if there was any settlement Ralph might come and make it. When
I first knew Ralph he was living with his brother; he went into Indi-
ana and there run a threshing machine; he was not then in the condi-
tion he is now; about the time he quit running it we saw the change
in him; I discovered a distinct change in his character, not doing bu-
siness as he used to. He has hired himself out and made his own
427 bargain. When he got money he would take a little for tobacco and
give the rest to me. At the time of the County Court he got thirty-one
dollars, he gave thirty to me and kept one; he had a guardian ap-
428 pointed; I supposed I had no need to give it to him. When I came
to town I told my lawyer he was weak-minded, insane, or I did not
know what. The jury found Ralph to be distracted; the doctor
said he was neither insane nor lunatic, but weak-minded. He did not
429 use tobacco or liquor to excess. I swore to the affidavit on which the
proceedings were had in the County Court. Mr. Eldridge drew it and
I heard it read.

The defence called John Little, who testified in substance as fol-
lows:

430 I live in Kankakee County. At the time Mrs. Hopps was killed I
was in Mr. Schenck's back yard, about forty rods from the Hopps' place,
431 on the same side of the road. I heard a loud noise at Hopps', and the
second time I heard it I went up there. It was between sundown and
432 dusk. He said he killed his wife because it was right, and that he was
not sorry for it. He said he called on Mr. Luce, Schenck and Little to
take notice of that fact. This was said in their hearing. He said he
was not under the influence of liquor, and called upon the same per-
sons to take notice of that fact. He said he was not under the influ-
ence of liquor, as Mr. Schenck said he was, but was in his right mind,
and knew what he was doing. He talked pretty rational when I talked
with him, as though he knew what he was talking about; that was
433 about half an hour after I got there, and I got there about ten minutes
after Mrs. Hopps was stabbed. I found only Mary and the younger
children there. Peter Schenck and Mr. Luce came afterwards. When
434 I got there, Mr. Hopps was the first man I saw; he was sitting just
inside the door; it was not dark; he spoke to me first, and said "good
evening, Mr. Little." I said "good evening, Mr. Hopps," and passed
time day with him. He asked me to take a chair. I asked him what
the trouble was; I said there was almost too much noise to have things
going on smoothly. "Not anything of any consequence," was the ans-
436 wer he made me; he appeared to be perfectly cool, and appeared to
me as though he was sober. I asked him if he was not sorry for what
he had done; he said no, he could not say he was sorry if they were
437 to take him right out and execute him. Mr. Schenck was there then.

Mr. Luce came next, and Hopps said he wanted us all to understand that he was not under the influence of liquor, as Mr. Schenck had said; he knew what he was doing; it had been in his mind for ten years. I staid through the night; he lay on the lounge; slept pretty soundly a part of the night; he got up about eight or nine in the morning; then
438 he went into the bed-room to see his wife; Mr. Merrill asked him to go; that was about half an hour before she died; he appeared the same afterwards. I should think from his actions through the night that he was either a very hard-hearted man or under the influence of liquor. I have known him about five years; in the winter would see
439 him most every day, in the summer not quite so often; have seen him drunk in the winter when he was hauling wood; it was a common thing for him to be intoxicated before he got home. When sober he is a good-hearted man, upright in his business. Sometimes he speaks to his neighbors, and sometimes he don't, but after he begins to drink he is a friendly man; after he gets drunk enough to have an effect
440 upon him, very friendly, very talkative. I never saw him away from home under the influence of liquor but that he appeared friendly; at home it was rather rough, I mean by that, abusing his wife. I never knew him abuse any of his children. I have seen him at home sober, and he was friendly toward all; never saw him abuse his wife when
441 sober. The noise I heard before I went up there was loud talk; I could recognize Mr. Hopps' voice; he called her a God-damned whore! a God-damned bitch! I could see three persons from where I was; I heard Mary calling, "You've killed my mother," and Mrs.
442 Hopps was calling some men in the yard. I had heard some disturbance there before, and for that reason did not go up at first. I was never at Hopps' house but once when he abused his wife; it was the
443 night of a party there two or three years ago; he called her a damned whore; it was in the parlor; she went up stairs, and he followed her
444 up, keeping up the abuse; he was friendly to the rest of the company; I saw no act of intoxication except his abuse of his wife; I had never
445 been there to a party before; he could not walk straight, but he talked rational enough. I saw no other symptom of drunkenness the night Mrs. Hopps was killed, except that he was hard-hearted. About ten
the evening of the party he began to show signs of drunkenness; I went there at seven or eight; he was sober then; when he abused her
447 there were several persons in the room. I never saw anything peculiar or singular in his conduct except when under the influence of liquor.
448 He carried on a large farm, and was engaged in making butter; he kept four or five men.

REBUTTING TESTIMONY.

The people called Jacob Hunsinger, who testified in substance as follows:

448 I reside at Wheeling, about two miles from Hopps' place, and have
known him about eleven years; I kept tavern in Wheeling the day
449 Mrs. Hopps was stabbed; He was at my house at eight or nine in the
morning; he was going to mill; he drank once or twice; I believe he
450 took whisky. In the afternoon, on his way back, he stopped for some
time, and drank four or five times; more or less; I mean during
that day; probably three or four times after he came from mill; I be-
451 lieve he drank some beer in the afternoon; more beer than whisky.
Mr. Matteson got a gallon of whisky that afternoon; he said to Hopps
that if he did not get chance to ride he must walk home; Hopps said
he would carry him; I did not see them start; Hopps was there when
452 I left; when he went to mill he had some grain; when he came back
the wagon was empty; he and Matteson were drinking together at my
house; he had some cross words with the blacksmith.

The Defendant here objected to the introduction of testimony to prove new instances of drinking, as this was rebutting testimony. The objection was overruled by the Court, and the evidence admitted. To the decision of the Court in admitting the same the defendant then and there excepted.

453 During this difficulty he acted a little crosser than he had some
454 days; it was about a wagon; they would have had a fight; I told them
to keep quiet, and they did; this was about two o'clock; they did not
455 swear, but talked as though they might fight; Mr. Blodgett was there
after I had gone. I saw Hopps again that day a little way from his
house on the way home; it was between five and six; I drove right by
him, bowed my head, and said, "Are you going home?" He did not
456 answer me; he was alone; my wife's sister was with me; I thought
Hopps was a little crosser that day than on some others; I never saw
457 much strange about him whether he was sober or drunk; he always
dealt fairly. When I met him on his way home it was light enough to
458 see him distinctly; he was in a two horse wagon sitting up and driving;
I told that lady "I guess Mr. Hopps is pretty sober to-day;" "I thought
he was on a spree to-day;" he drove slow that day, and when he was
drunk he drove like everything; I was afraid he would go home with
Matteson and get on a spree, and I said "I guess Hopps is pretty sober;"

I did not speak very loud to him, and the noise of the teams might have
459 prevented his hearing me; I have known him for many years but he
did not recognize me at all; I said I was satisfied he was not drunk
when I met him; when he is drinking, a little more tends to keep him
460 in good humor; Matteson lives two and a half miles south of Wheel-
ing; I never saw him cross when he had liquor, and I have seem him
so tight that I had to put him to bed. Once last winter Hopps was
461 drunk and fell off the wagon; he was pretty drunk at that time. Some-
times when drunk he would sing; generally he was pretty happy. The
night he fell off the wagon I put him to bed. The evening I met
Hopps going home he sat pretty straight in the wagon.

The people called Avery Blodgett, who testified in substance as follows :

462 I live at Wheeling, and know Hopps was at Honsinger's Tavern
on the day Mrs. Hopps was stabbed; I got there about 4 o'clock in the
afternoon; saw Hopps; he was about drinking just as I went in; Mrs.
Honsinger was tending the bar; he invited me to drink, and I called
463 for a glass of lemonade; they had no lemonade and I called for wine;
Mr. Hopps said I had better take whisky; he took whisky I supposed;
he said he had not worked any for two or three weeks, and that whisky
464 made him feel like killing everybody; he spoke of his arm and shoulder
being hurt; I knew of it; I do not of my own knowledge know that
he drank at that time; I left about 5 o'clock with him; we went to
Matteson's, and from there I returned with him to Wheeling; he said
465 he wanted to talk on business, and after we started back he commenced
talking on business, and talked at first very regular, and then a little
wild, he talked some on business, as usual, and then he would fly off
and talk rather wild, his words were, "He cared for nobody, and why
466 should he." I have seen him when he was in liquor and when he was
sober, but I did not consider him drunk at that time; he was a little de-
lirious, I suppose from the effects of liquor he had drank, not that day,
but before. In the conversation he spoke something about his family;
he wanted to take care of his children; as to his wife she did not care
anything for him, she had told him so lots of times. Sometimes he
talked as usual, and then would fly off from one thing to another; he
would start off on one question and change directly and wildly without
467 regard to connection. His manner was different from any time I had
seen him before, whether drunk or sober. At that time I did not con-
sider him drunk; I had seen him drunk, and was acquainted with him
468 enough to know when he was drunk. Matteson took along a jug which
he called whiskey; there was no drinking between the tavern and Mat-
teson's; Hopps drank after he got there; he went to drink three times;
the last time it was very small; I did not notice the other times; we

started right back. I formed my opinions from my knowledge of the man, his manner and appearance.

The people called Joseph Spinhiser, who testified in substance as follows :

469 I made cheese at Hopps' the summer of 1862 ; I was there the
evening Mrs. Hopps was stabbed ; I did some business with Mr. Hopps
470 about 10 o'clock in the morning of that day ; he was going to Wheel-
ing, and I gave him some money to get me some cheese runnett ; I gave
him three dollars. When I was going to bed that evening Mr. Hopps
471 said, hold on, Jo? I have got some change for you, and the runnett you
will find in the wagon, and Honsinger gave me fifty cents for you ; I
had sent him cheese twice ; the money and change was exactly right.

The people recalled Alonzo Hawks, who testified in substance as follows :

472 I was there the morning after Mrs. Hopps was stabbed about 9
o'clock. Hopps got some oats from me in the spring, and the bargain
473 was that he was to pay me what I got for mine when marketed. When
I went in he was on the lounge, and asked me to come and settle ; he
said, " I guess I had better pay you for those oats, you have got no note
and may have trouble about it." I told him they fell short eight bushels
to the hundred ; he said that was right, he had weighed them ; he took
his pencil, figured up the oats correctly, and paid me ; he said he did
not get quite as much for his.

478 I have known Hopps for fourteen years, and lived for the last
seven about a mile and a quarter from him ; sometimes I see him a
number of times a week, and then again not for a month. I should
474 not call him proud, but he always seemed to have an idea of liking to
have a good reputation. When I settled with him two or three men
came up and presented notes for payment, he said gentlemen, " You
have got notes, when they are due they will be paid." His wife was
475 away at Paw Paw Grove ; he said liquor was the cause ; this was sev-
eral years ago ; he said he would sacrifice his thumb and fingers to get
478 her back. After the Constable arrested him I took a seat by his side
and asked him how in the world he could do such a thing. He said he
had done everything for her ; built a house and furnished it, and she
had gone off and said bad things about him, and it was no good woman
that would do so, and said she is a big strong woman, and had seized
him by the throat ; there were some marks that looked like finger
marks on his throat ; have never seen anything peculiar about him more
than the effect of liquor.

The People called John Rocket who testified in substance as follows:

480 I have known Hopps ten years; am a blacksmith and live at
481 Wheeling; saw him the day his wife was stabbed towards evening
482 about six o'clock; I put a shoe on his horse; he was talking about bad
483 money; said the progress of banking would break down the State; I
484 have done work for him for five years. I heard him make some state-
485 ments in the Masonic Lodge about his wife. He said he abused her
486 and would not have done so, if it had not been for liquor, he was sober
487 when he made the statement. I never saw anything peculiar in him
488 when sober.

484 The People called Peter C. Schenck, who testified in substance as follows:

485 Have lived about forty or fifty rods west of Hopps seven or eight
486 years next April; was there the evening he stabbed his wife, about
487 half past seven. When I went in I said, "What on earth have you
488 been doing," says he, nothing more than I intended. I sent a boy
489 after the doctor; Mr. Hopps was there but he did nothing. I made ob-
490 servation to Hopps that it was through whiskey he had done this, he
491 said, "It is not through the influence of liquor, not at all, for the time
492 had been long coming on, what he had done; for this has been contem-
493 plated for the last ten years;" that was all the conversation I had with
494 him. I was walking between the kitchen door and piazza, and stepped
495 on the knife, (here in court,) there was blood on the blade; I took it
496 and gave it to the Coroner; there was some grass where the knife was;
497 it was pretty dark and I could not have seen it without stepping on it.
498 I have never discovered anything peculiar in him when he was sober;
499 when sober he was very still, when in liquor pretty talkative; in the
500 absence of his wife he kept pretty sober. There was something said
501 about his calling on those around, to take notice that he was not intoxi-
502 cated, that was in the kitchen. He said the act he had done was right.
503 That is my signature to the Coroner's minutes; the oath was admin-
504 istered. When I made oath I did say I had heard the statement Mr.
505 Little had made. My evidence and Mr. Little's agreed. I did hear
506 Hopps say, I want you and Mr. Little and these to witness that I was
507 not under the influence of liquor; he showed a little appearance of
508 liquor; I might be mistaken in this. I did swear before the Coroner
509 that he talked rational and natural. He came to my house Sunday
510 once about a line fence; we had some words about it, and finally, he
511 accused me of carrying away his woman. I told him she came there
512 for protection.

The People called George Strong, who testified in substance as follows :

498 I am a farmer, and live $3\frac{1}{2}$ miles from Hopps; have known him
ever since he came there, about twenty-five years ago. I meet him
499 often. I never saw anything which led me to suppose anything ailed
him but liquor. On the first of September, 1862, I went into jail to
500 see Hopps at his request. At that time or another I saw some ten
or fifteen bottles in his cell; he said he kept a little to take himself.

The Defendant here objected to evidence showing Hopps' drinking in jail after his arrest, which objection was overruled by the Court, and exceptions then and there taken by the prisoner to said ruling.

501 He said he expected to have a trial soon, and as I was a man of considerable influence he wanted to put me right on the question that was up. I told him that I believed liquor was the cause of it. He told me he was not under the influence of liquor, but was crazy, and did not know what he was about at the time, but said he was rational now. I told him that I recently understood he had charged his wife with infidelity. I asked if it was any one in the neighborhood. He said the person was dead, and he did not like to mention his name. Nothing was said upon the subject of counsel. I don't know whether he had any at that time.

The People called James Mitchel, who testified in substance as follows :

502 I have known Hopps for twenty years; saw considerably of him formerly, not so much lately; have never seen anything in him which struck me as peculiar.

The People called E. T. Colby, who testified in substance as follows :

503 I have known the defendant nineteen years. I am a lawyer; was
504 a partner of Judge Bradwell. We did some business for defendant; I always considered him a good business man and a good farmer. In
505 May or June, 1862, we collected some money for him, and I have had frequent interviews with him on business. I did not discover anything singular or peculiar about him.

The People called Peter Olinger, who testified in substance as follows:

507 I worked for Hopps when he stabbed his wife; was milking at the
508 time; the first I heard was Hopps calling his wife hard names, damned
whore or bitch; soon I heard the woman call my name, Peter. I went
down to the house, and saw Mrs. Hopps; she stood near the little
gate; had hold of the gate; she said, "Never mind, Mary, I go to
509 heaven." This was on Monday night. Tuesday night of the week
before he had abused his wife; he came out and proposed to fight
510 Louis (one of the men); Louis said, "You are not stout enough."
Then he went to another hired man whose name is Gattlief, and said,
"I will fight you." This man said, "If you want to fight, go and fight
Peter." He answered, "That is fair; if you say so I will." He came
at me with, "I fight you." He did not do anything only for fun. I
said, "I would run away." He said, "I will catch you." I said,
"Try it," and started, and he followed me. We run around the house
a couple of times, and sat down, I saying I had fun enough and would
go to bed. He said, "That's right, Peter, I shall do so too," and we
went into the buttry, and drank once, and I went to bed. He sent for
me to come and see him in October in jail. He said he wanted to see
511 me about that story that folks said he followed me with a butcher-knife.
I said, "Some folks told you a lie." He asked, "What for did I follow
you?" I told him, "For fun." Says he, "Fun don't save much life."
512 He said, "You tell a different story from other folks; my lawyer
wanted that if you will tell the same story these other folks tell, it will
help me a good deal."

The people called Michael Hopps, who testified in substance as follows:

These two signatures (two shown the witness) I should doubt if they were the hand-writing of defendant.

512 The people called Mrs. McNabb, who testified in substance as follows:

513 I am a daughter of the defendant; know his signature; these (referring to those shown) are his.

517 The people here offered papers in evidence dated 25th November, and the record of judgment, the admission of which was objected to by the defendant, the objection overruled, and the evidence admitted by the Court, to which ruling of the Court the defendant then and there excepted. Certain documents alluded to read by counsel for the people.

The people called Wm. L. Greenleaf, who testified in substance as follows :

I am Deputy Clerk of this court. The papers containing a judgment entered on the records of this court. Judgment note here read in evidence.

The people called J. J. Beardsley, who testified in substance as follows :

520 I knew Wm. Hopps in Vermont from 1832 until three or four years
after ; I should not recognize the prisoner at the bar as a man I had
522 ever seen before ; from 1832 to '37 I kept Custom House at Franklin,
Vermont ; during the time I knew Hopps he was engaged in carrying
merchandise into Canada and bringing stuff back ; he had several teams
employed at one time ; I regarded him as a shrewd, resolute man ; he
generally called at my office and paid duties, but he did not always
call.

The defendant objected to the above testimony, which objection was overruled by the Court, and exception then and there taken to said ruling by the defendant.

The people called Pallas Phelps, who testified in substance as follows :

524 I have known the defendant about thirty-one years ; knew him in
Franklin county, Vermont. I knew Beardsley in 1831 in same county.
525 Hopps was engaged in trade ; his business was a good deal of it in
Canada.

The defendant objected to the admission of the above evidence of the last witness, which objection was overruled and exception thereupon taken by the defendant to said ruling of the Court.

526 He was dealing in merchandise generally, purchased in Canada and
brought into the States. I knew him well ; resided four years near
him on the same street, and eight years opposite to him. I came west
two or three years after he did, and with that exception have known
him ever since ; I never saw anything peculiar about him ; I knew
nothing against him in Vermont except his being engaged in the viola-
tion of the United States law in smuggling.

527 The defendant here moved to exclude all the testimony of the two
last witnesses, Phelps and Beardsley, in relation to the defendant's
smuggling in Vermont, which motion was overruled by the Court, to
which said ruling the defendant excepted.

My own observation is that he managed the business shrewdly and and seldom got caught, in fact, I don't remember that he ever got caught; he had a span of black horses distinguished for their great speed and endurance; he fed them very high in winter; they generally rested in the summer; he said he could run them twenty-five miles on a stretch without feeding; I am a lawyer, not much in practice, although I have not retired from it. Hopps gave me to understand, by inuendo, that he smuggled, although he did not tell me so. I was indicted for forgery in Vermont and acquitted; I was convicted in the Circuit Court and acquitted on appeal; I did not commit the forgery.

The people called A. F. Miner, who testified in substance as follows :

534 Have known the defendant since fall of 1855; have done some joiner work for him.

Question—"Did you ever have any conversation with him during the time of your acquaintance, in reference to the business he was engaged in down East?"

Which was objected to by defendant, and the objection overruled by the Court, to which ruling of the Court the defendant then and there excepted.

535 I heard him say while living in Vermont, he had some deal backward and forward from Canada into the States; he said he lost some money and run some severe perils. When I was at work on his house 536 he was very particular, and gave minute directions. I never discovered anything peculiar in him. He appeared to me to be a very fine 537 business man.

The People called Milo Winchell who testified in substance as follows :

538 I am a farmer; have known defendant from twenty to twenty-five years. I am Master of the Lodge at Wheeling. Hopps was a member of it; became so in '50 or '51. He has admitted to me about his drinking and abusing his wife, and always promised to do better when I spoke to him about it; this was at different times; mostly while she was away. He was trying to get me to help him get his wife back; he 540 was sober then and said he could not live without her; this was four 541 or five years ago. I told him that I should write her if she did come back to have him taken care of. He has always acknowledged his faults when labored with by different members of the Lodge; he

542 said liquor was the fault and his wife was perfect as far as human being
could be. It never entered my mind that he was different from other
543 men when he let liquor alone. There never was anything in that
Lodge that could have excited a suspicion that the Masons intended
taking his life. He never saw the letter I wrote to his wife, unless
544 since it has passed out of my hands; after I told him what I should
say to his wife, he still requested me to write; I don't think he asked
me to write his promises of reformation.

The People called Levi Aft, who testified in substance as follows :

546 I live in Wheeling; keep store opposite Post Office; saw Hopps
about 5 o'clock the day his wife was killed; he was in his wagon in the
street. A man was coming down the road who was in liquor; he was
walking in the ditch and called to Hopps to see if he could ride; Hopps
did not understand him, and asked what he said. I said don't mind him,
547 he is drunk; "Well," says Hopps, "he must not insult me," but says I,
he don't insult you; saye he, "hold my horses and I will get out and
lick him with one hand;" I said don't trouble him; he said "right" and
drove off; he seemed a little mad but did not get out.

The People called E. R. Beech, who testified in substance as follows :

548 I live in Wheeling two miles from Hopps; am a blacksmith; have
known Hopps fifteen years and done work for him. I know his family
well; in August, 1857, between eleven and three at night, she came to
549 my house on foot and alone; she staid at my house an hour or an hour
and a half. I took her over to Winchell's. When he was looking
550 for her I told him about her coming to my house, and that she said he
had been taking liquor and had abused her; he admitted it and said he
would quit it. She came there one night the next season the same
551 way; she staid an hour and I sent her to Mr. Winchell's again. I
don't recollect that I afterwards had any talk with him about her
552 coming there the second time. He said afterwards it was drinking and
he was not going to take any more liquor; he said when he had no
553 drink he never abused his family. He said his wife was as good a
woman as the Lord ever made. I never discovered anything singular
554 in him; he was a good, upright man in business as I ever dealt with.

The people called Rebecca Luce, who testified in substance as follows :

555 I live about eighty rods from Hopps'; was there the night she
was killed—about half an hour after it happened. I staid with her all
night. She was aware she was going to die from the wound. She

556 told me about an hour before she died, that she was not aware of his
having the knife; that he had it concealed in his sleeve, and that she
never knew why Hopps treated her so cruelly; she said she would like
to see Mr. Hopps, but was so faint and excited she could not. Once,
557 Hopps came to our house quite early in the morning, and wanted to
know if his wife was there. I told him she was not. After breakfast
I went over there to see the children. He said when the men went
out, they told him there was a woman coming across the field that
looked like Mrs. Hopps, and he said, "oh, it is you; I thought it was
ma." He said it was nothing but liquor that caused the trouble, and
that he would not drink any more, and would sacrifice every penny
558 of property he had in the world to get her back. I knew the sickly
daughter; she has been natural and rational; has been out of health;
559 had some female difficulties. The morning of her death I was there;
Hopps appeared just as he always did; before he left he gave some
particular directions about money and business matters. He said
560 \$200 of the money was borrowed money, and that was to be paid first.
Never heard him say anything about being jealous of his wife.

The People recalled Henry Merrill, who testified in substance as follows:

561 When Mrs. Hopps was about dying, Hopps laid on the lounge;
some one said, "Mother is about dying," and as the family were about
going in to see her, (Martha the daughter was very sick,) he raised
his head and said very sharply, once or twice, "Don't take Martha
562 there," or "in the room." I know Hopps well; see him often; never
saw anything peculiar in him; he said the cause of abusing his wife
was nothing but liquor; when he had whisky the devil was in him.
563 He sent for me to talk with him; he said he could not live without
his wife; could not enjoy himself without her. He was sober when
he was making these remarks.

The People called Benjamin C. Luce, who testified in substance as follows:

564 I am conservator of Ralph Hopps; have known him since fall of
1837; Ralph seems simple and weak-minded; he is able to do work;
I have lived for twenty years past within 160 rods of Hopps; I never
565 saw anything peculiar about him when he was not in liquor. Next
to the last time she left him, I talked with him about her leaving him; he
said it was nothing but cursed whisky; he said he could leave liquor
566 alone, and would. I saw him in jail in August last; I was in two or
567 three times about the conservatorship. He said he regretted it very
568 much, and would give a world, yes, a hundred worlds, if it could be
recalled, and he could go home with his family. The second time I

569 was in I could smell his breath and see that he had been drinking. I
settled with him about Ralph's business, and he requested me to see
Mr. McComas, and I did so. He said that all his seeming kindness
before people to his wife was hypocrisy, and he did not mean it. One
570 time I was in his cell, and he was filling up some bottles, out of a gallon
measure, with beer. I was there soon after he stabbed his wife. He
said he did not wish us to understand that he did it under the influence
of liquor, for he did not; he knew what he was doing, and had con-
templated it for ten years. Ralph Hopps was not always foolish. I
571 should say the change came fifteen or sixteen years ago. He always
expressed the greatest kindness and affection for his family and chil-
dren, and inquired particularly after Martha and the youngest. I can-
not say but the desire he expressed to get out was in this connection.
572 I would not give the conversation word for word, nor in its order. I
was talking about what a good woman his wife was, and how he pre-
tended to love her. He said it was all hypocrisy. I recollect when
573 Hopps was thrown from his wagon; he was badly hurt, and was very
drunk.

The People called Egbert B. Van Vlack, who testified in substance
as follows:

574 I have lived at Wheeling twenty-three years, with the exception
of six years at Chicago. I am a carpenter, and took contract to build
575 Hopps' house. I never saw anything wrong or peculiar about him;
he was particular about his house; it cost him about six thousand dol-
576 lars. I saw him in jail on the 4th of July last. I talked with him
some two hours; he seemed to have a very good memory; called to
577 mind some things I had forgotten; he said the reports in the papers
were incorrect as to his premeditated design; he said there had been
difficulty between himself and wife for ten or twelve years, but he had
not told any one that he intended to kill her; he said, "I would give
a world, yes, a hundred worlds, to put it back, to undo it." I intro-
578 duced Mr. Merrill to Mr. Tourtellotte; that was about two weeks be-
fore the petition was filed.

Question—Did you have any conversation with them as to what
was the matter with Ralph.

The defendant objected to the foregoing question, which objec-
tion was overruled by the Court, and thereupon the defendant then and
there excepted to the said ruling of the Court.

579 Mr. Merrill said he is an insane or crazy person. I corrected him
and said, "he is not insane, he is merely simple and lost his powers of

mind;" Mr. Tourtellote said it amounted to the same thing; I said it was
different in my opinion, and protested against it being done, and so he
580 said, "Very well," and I thought he complied with my suggestion. I
said to Mr. Tourtellote that I thought it would prejudice justice in the
trial of William Hopps if Ralph was insane; I said it could be ar-
581 ranged as Mr. Merrill wished. I was present at the trial of Ralph's
case. I think Mr. McComas was there. I have known Ralph about
582 twenty-three years; he was not always foolish. The language I used
to Mr. Merrill and Mr. Tourtellote was merely advisory; I had noth-
ing to do with it; we went to the jail to see William Hopps; it was all
new to him. He said there was a morsel of right in the case; that
there was \$500 or \$600 of Ralph's money that he had used, which was
583 sent from England. All the part Mr. McComas took at Ralph's trial
584 was to object to Mr. Merrill as conservator. The history of Ralph
was gone into before the jury by his friends and acquaintances.

The People called Jonas Johnson, who testified in substance as
follows :

585 I keep the Farmer's Hotel in Chicago ; have furnished Hopps ten
gallons of beer since he has been in jail; put whiskey in three times; a
pint two of the times; it was Lill's XXX ale.

The People called William Hopps, jr., who testified in substance
as follows :

588 I was there when mother was stabbed; father threw the knife
away; he threw it out in the yard and went back into the house; he
589 was standing on the walk and threw it down one side; my mother was
590 stabbed in the house; my father has had that knife since last winter.

The People called Thomas Fullager, who testified in substance as
follows :

I have known Hopps twenty-five or twenty-six years; live a mile
west. In July, five or six years ago, I went at Mr. Thornton's request
to see Hopps about abusing his wife. He told me to go home and
591 mind my own business; that he should manage his wife as he had
hitherto done. I asked his wife if he abused her, and she said I have
asked him many times what it was for, and I ask him again now for
592 I never gave him a cross word or look in my life; he made no reply.
I told his wife that if he abused her again I would have him taken
care of. I said to him that he might kill her and then he would be
593 hung. Hopps made no reply to all this, except that I wanted to part
man and wife. About the third morning after that he met me and said

594 he thought I came with a friendly intention, and that he had not
abused his wife since. I told him that if he did not abuse his wife up
to Christmas I would shake hands with him. He said she was one of
595 the best women, and when I asked him why he abused her, he said it
is drink. Sometimes in the morning he would hardly speak; in the
middle of the day he is lively, and at night very lively; otherwise I
never saw anything different in him from other men.

The people recalled Benjamin C. Luce, who testified in substance
as follows:

596 In jail I asked Hopps if it was true that he had agreed to pay
counsel \$2000. He said he had not agreed upon any sum, but said
what is \$2000 compared with a man's life; said he could soon make it
if he could get back on the farm; said he would not have any counsel
unless it was the best he could get; he spoke of Van Arman and Mc-
597 Comas, and asked my advice. I think Hopps was married in 1839;
his wife's name was Smith; they were of Scotch descent. Once I
went to Hopps' house and heard loud talk before I went in from some
one; when I got in it was all pleasant.

The people called Gustavus Fischer, who testified in substance as
follows:

598 I have been Deputy Sheriff for two years. I took Hopps from
jail back to Wheeling to attend the inquest; I started from jail about
599 nine in the evening; we had to stop for Wells street bridge, and he
asked if there was a place to get anything to drink; I said no. After
we got in the cars he asked who the attorneys had been for Jumpertz.
I told him Van Arman and McComas. He asked me if they were good
criminal lawyers. I said they had the reputation of being the best.
600 When we got to the station we went to a saloon and took a glass of ale.
After we got where the inquest was he lay down on a lounge and fell
asleep; after a short time the Coroner asked him step to into the bed-
room, and asked him if that was his wife; he said yes. After the jury
601 retired he went into the buttry, filled a glass from a jug, and drank it;
602 it was liquor, I think he filled the tumbler. William Hopps was sworn
before the Coroner. He said something about jealousy being the
cause of killing his wife, though I don't remember what was said on
that subject. The Coroner asked whether he committed the act; he
said he did, and that was the knife with which he did it, and jealousy
was the cause. He rode back with me, behaved like a gentleman,
603 seemed to be sober, but worn out. We got there at eleven or twelve
at night, and started back the same morning at three.

The people called John S. Everett, who testified in substance as follows :

I am acquainted with the hand-writing of W. H. Davis. The paper shown me is his hand-writing.

The people called Mrs. McNabb, daughter of defendant, who testified in substance as follows :

The paper shown me is my father's hand-writing.

The people called Abel Smith, who testified in substance as follows :

604 I am related to William Hopps' wife ; I saw the paper shown me in the possession of Mrs. Hopps about the time of its date.

The people called Michael Hopps, who testified in substance as follows :

605 I am a cousin of the defendant ; have known him eight and a half years ; I came from England in 1854 ; I knew all his relatives that I ever heard of ; I never heard of such a thing as insanity in the family ; I lived some two or three months in defendant's house, and for two years close by ; I never saw him abuse her except when in liquor ; he would pull her about pretty rough ; I have known him to strike her a good many times ; his blows left marks on her a good many times ; I wrote to her father ; that was when he was making great professions of reformation ; he said if he could only get her back he would never abuse her again ; I believe he laid the blame to drink, and said he was going to leave off drinking ; I think Mr. Hopps once made profession of seeking religion ; I think he told me so ; I never saw anything peculiar or singular as to his state of mind ; I never heard anything about defendant's mother ; I knew Ralph was simple-minded this last ten or fifteen years. William would abuse his wife at all times, day or night, and keep it up for two or three days ; he kept liquor in his house and drank every day more or less ; I have seen him when he was abusing his wife go about his ordinary business, attend to all other relations, and treat everybody else very properly ; on these occasions she exhibited all the forbearance and mildness a woman could ; the most I could hear her say was, " Don't William, you hurt me," and advise him to take medicine ; he was bilious sometimes, and she would frequently advise him to take calomel, a thing which he took a great deal of ; he took very strong doses of calomel, more than I should like to take, and more than a dose for an ordinary man.

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The People called Conrad Foltz, who testified in substance as follows :

611 I am turnkey of the jail ; was also in July and August, 1862 ; Mr.
Van Arman came there about three or four weeks after Hopps was put
612 in ; he only came two or three times, and then, I understood, went to
the army. McComas came about two weeks after Van Arman's first
613 visit, and continued to come about once a week ; Mr. Van Arman was
never there after he and McComas came together ; McComas never
saw Hopps only in the public hall, except when the doctors came, and
then he wanted to see Mr. Hopps in the hall ; I told him it was against
the rules.

The People called Elizabeth Hopps, who testified in substance as follows :

615 I am a daughter of the defendant ; father had trouble with Merrill
about a horse, and told mother Merrill was intending to sue him for the
horse, and said, " Let him do it, and see how much he can get by it ;"
616 she told him he had better settle it, and he was displeased. Before
Fullager came there father and he were friendly ; after that he used
617 sometimes to call him names ; called him " an old dough-gun ;" he was
also unfriendly towards Merrill and Mitchell. The first time I ever
618 saw father strike her was about ten years ago ; it was after the horse
matter ; it was in the evening, in the summer time ; I was up stairs ;
heard father hallooing, swearing, and talking, and came down ; he had
her by the hair, and knocked her head against the wall ; he struck her
619 several times, and, when we tried to stop him, told us to go away ; he
scolded her awhile, and then went to bed ; he had liquor in the house,
620 and had been drinking hard that day ; during his beating I remember
his saying she had turned against him and was mean to him ; he was
worse that time than any time I remember. We have known of her
621 leaving the house in the night time. I have heard him say he never
did anything wrong in his life, and she did ; that she was mean to him.
She had to black his boots, and he was overbearing to her, and told
622 her he had taken her from the wash tub, and made her what she was.
When she had marks from his blows she would stay at home ; once she
had a black eye, and her aunt was sick, and she urged him to take her
623 to Paw Paw Grove ; he did so, afterwards reproached her for wanting
625 to go when she was in such a condition. Once, when Mr. Winchell
brought mother back, father went out to meet her and brought her in ;
they had come from Chicago that day ; they came in our carriage ; Pa
626 sent the carriage down that morning ; mother was very mild and amia-
ble. Father was troubled some with the dyspepsia ; used to say he
627 had the dyspepsia and heart-burn, and come in and get some soda ;
628 I have heard mother tell him that she thought he required some kind
of medicine ; she thought he was bilious. He was quick tempered ;

629 before he struck her, ten years ago, he had not been cross to her. I heard him talk to her about applying for a divorce; he said he thought it was mean for her to do so; he seemed to be displeased about it.

The People called A. D. Partridge, who testified in substance as follows:

630 I have known defendant twenty-four years; I married his sister;
631 I never knew of any insanity in the family until Ralph had a little time;
I did not see Ralph for sometime, for it was supposed he was insane,
or said he was insane; I supposed this time of insanity was a spell of
love-sickness; he had no affairs of the heart or love to my knowledge;
632 I have not seen him for eleven years. I never saw anything peculiar
in William Hopps; I have not seen William for nearly eleven years.
I saw Ralph in 1851, and he acted queer; we could not get any conversation out of him.

The People re-called Mary Hopps, who testified in substance as follows:

634 I remember the German who worked at my father's five days; his name was John; he came there at night and said, "Work, work;" I sent him in to father, but did not hear what they said; the next he and father had a real spree; they drank about every fifteen minutes, and were both quite intoxicated. When Miss Thornton was at our house father abused mother for compelling him to take her to grandfather's with a black eye. Miss Thornton said she was sorry to see him act so. He said he was sorry too, but she compelled him to do it. He thought Miss Thornton had been telling of it, and he scolded me for letting her come when she had tried to injure his character; he seemed angry at her afterwards.

The People called Hannah Thornton, who testified in substance as follows:

641 I did some sewing at Hopps five years ago. I was there four weeks. Mr. Hopps came home one day and commenced abusing his wife. She got up and left the room; he called to her and said, "Martha, come back, why do you run from my presence?" She said, I don't run from you, I went into the room to finish my hair. He then went into the buttry and took a glass of whiskey; he came back and commenced abusing her, and struck her; he set his chair by her and took another drink of whiskey, and then asked her, "why she should shun his presence, when he wanted to talk to her on a subject of so much importance, where she had disgraced him so," and he called her several pretty hard names. He called her a damned bitch and a whore. He
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then struck her again pretty hard, and I arose and spoke to him for it, and told him I was sorry to see any such thing; and he said he would rather have given \$500 than for me to see any such thing; that she compelled him to do it. While he was going on in this way I looked out the window and said, a gentleman is coming; he then looked out and saw some one and quieted down in a second; went to the door; met the gentleman very politely and brought him in. The gentleman asked, "Have you any butter for sale?" and he turned to his wife and said, "My dear, have you?" She said they had. They
644 then went down into the cellar and brought up the butter. The gentleman took the butter and paid Mr. Hopps fifty dollars for it. He handed the money over to his wife, and said, "here, she is my keeper." Hopps went into the buttry and took another drink, and then commenced to abuse his wife again; he took a tumbler nearly full; sat down
645 by the stove and hardly taken his seat before he jumped up saying, "Martha, I cannot stand it, I cannot endure it." She went out and he followed her into the wood shed; she did not come back for near an hour, but went to the barn; I could hear them clear to the barn. I was alarmed, and tried to get the men to go to them; it was near dark when she came in. He went into the buttry again; I did not see him drink, but presume he did. He then said to her, "We must go into the parlor and have this settled." I told her to prevail upon him to tell her what she had done. She asked him, and he says, "Martha, you know you damned bitch you," and he says you know the disgrace. You made me carry you to your father's, and she said, "it was not my fault, was it," and he says, yes it was, and he talked upon that
646 until they went into the parlor; he kept going on the same way until two o'clock in the morning; he came out of the parlor and took his jug of whiskey in with him. She says you know that eye was not my doings, you caused it, and he said your conduct compelled me to do it. Sometime afterwards Hopps came into his brother's where I was, and went out again when he saw me, and talked to them about allowing me to be there after I had tried to injure him. This may have been
647 two weeks after he struck his wife. Some one told him that I told the story around, and he did not speak to me. Wheeling has been my residence for fourteen or fifteen years. I never saw anything not perfectly kind in Hopps, only when he had been drinking. I never saw
648 him abuse his wife but that once.

The people called Mrs. Jane McNab, who testified in substance as follows :

649 I am the oldest daughter of the defendant. I knew about the horse difficulty with Merrill. I never knew father to strike mother before that. Father and Mr. Merrill agreed that each should pick one
650 man, and they two pick another, and the three decide it. Mother said she thought that was the best thing; after that, Mr. Merrill sued

father, and mother said he had better go and see Merrill, than to go to
 law about it; he did not seem willing to do it, although he sent the
 sheriff or constable to see Mr. Merrill, and try and settle it. It was ten
 651 years last summer since I first saw him strike her; it was under the
 tree in front of the house; he had been staying in the house all day
 and drinking pretty hard; she had been washing; he struck her in the
 face once and then kept on talking. Some nine or ten years ago, we
 652 had all gone to bed, and I saw him choking her; we ran down, and he
 had her by the hair and was knocking her head against the wall; she
 was faint, and got to the front door and sat down in a chair; he had
 653 been drinking that day; the next day her head was covered with bunch-
 es. Eight years ago he struck her with his fists and she fell down; he
 654 had been drinking, and it commenced as usual. She did not leave
 him until five years last summer; just before that he had been drinking
 655 very hard and was very abusive and struck her; I have seen him kick
 her. She has gone out of doors sometimes and stayed the better part
 656 of the night; when she left home she stayed about a week; she left
 four times; the last time she was gone over three months; that was in
 657 1858; I should think it was more than a week after her return before
 he commenced abusing her; when he commenced to drink he did not
 658 abuse her so much, but the more he drank the more he beat her; it
 659 grew upon him as he drank. Once he pretended that he did not drink,
 but we measured the demijohn and found there was a pint less in it than
 the day before. He said Mary drank it, then Lizzie, and stuck to it.
 660 He always commenced to appear cross as soon as he began drinking;
 sometimes cross to others. Several years ago he used to say I had
 turned against him; sometimes this was when I was trying to still him,
 and at other times when I would not be saying anything at all. I
 661 never knew him to strike or threaten her when sober. Before mother
 came back he said it could not be that she did intend to go through
 with it and get a divorce, that she had only applied for it to frighten
 him and make him treat her better, and when she came back he asked
 her if she intended to get one, and she said she did, and he said it
 would bring a severe disgrace upon him, and he did not want her to do
 662 it. He never liked Mr. Merrill very well, and never spoke well of Ful-
 lager after he came and talked with him, and he disliked Winchell worse
 663 than any other man; said he was a damned old rascal and had threat-
 ened to enter a complaint at the Lodge. Father's natural disposition
 was overbearing; he often said that no one could control him, that he
 would not submit to God Almighty himself; he used to say that liquor
 664 was the cause of the disturbance; it was ten years ago this last sum-
 mer since father first struck her; twelve or fifteen years ago he had the
 665 bilious fever; he used to have the heart-burn; he used to say his liver
 was affected, and took a good deal of calomel, but not of late years; it
 used to make his mouth sore and teeth loose, and then he stopped tak-
 ing it. When mother was sick, in child birth, father nursed her and
 667 drew her breasts. Once, several years ago, he quit drinking and did

not drink for some weeks. During the last five years he would abstain
some times several weeks and sometimes a few days; during those
668 times he was kind to her; when he began to drink he would be cross;
if he drank often he would get worse; occasionally he was not violent
669 when he drank; he always had spells of hard drinking; mother was
always kind to him; they seldom talked about the trouble; sometimes
670 after the influence of liquor had left him he would be kind, and at other
times just as bad as if the effects of liquor was going on. After he
had drank a great deal his eyes would look dull and sleepy, but it would
take a great quantity to make him appear in that way. He has beaten
672 mother a great many times in the last ten years; I could not tell how
many; I have known him to go on so three or four days at a time, and
673 sometimes during the night and part of the next day. When mother
was absent he always spoke of her kindly, and when not in liquor ap-
peared to regard her with affection; I do not think there was any pre-
tence about him.

The People here introduced the following letter from Milo Win-
chell to Mrs. Hopps:

NORTHFIELD, May 4th, 1858.

673 MRS. HOPPS—Mr. Hopps has requested me two or three times and
urged me very strongly to write to you. He seems very anxious that
you should come back, and of course makes all the fair promises possi-
ble, but you of course know as well as I what they are worth. I
would not presume to advise you one way or the other. You know as
well or better than I do what those promises are worth; but there is
674 one thing I would say to you: if you should come back, and he should
commence his abuse again, that you will stay and have him taken care
of.
MILO WINCHELL.

The People introduced the following letter from Drummond &
Davis:

CHICAGO, 6th May, 1858.

R. SMITH, *Esq.*, Paw Paw Grove:

DEAR SIR—Yours of April 24th received and contents noted.
In regard to Hopps vs. Hopps for divorce; bill has been drawn some
time and filed, but did not issue process, at the suggestion of Mr.
Hopps, as stated in our last to you, he then believing matters in regard
to his future conduct could be arranged. On your request to us to im-
mediately proceed was attended to and set for June term, and your
last, requesting us to defer the application, was very cheerfully done,

and must now stand over until September term, believing as a friend to both parties that a separation should be avoided if possible. I have not seen Hopps since I received your last.

Respectfully, yours, &c.,
DRUMMOND & DAVIS,
Attorneys, Chicago.

The rebutting testimony in behalf of the People here closed.

Rebutting Testimony for the Defence.

The Defendant called Edward Martin, who testified in substance as follows:

675 I know the prisoner at bar. A short time before I heard of this homicide, I met Mr. Hopps on Randolph street; I think it was near the Sherman House; I cannot state precisely the time; a week, or two weeks, a short time before; he was walking with his arms stretched out, and he says to me, "How do you do? will you take a drink?" and then he walked on and took no further notice of me. I had known Hopps for several years, and the occurrence took me as very strange. I don't think I ever took a drink with him before that time. I did not
676 think from what I saw that he had been drinking. My attention was not called to that subject.

The Defence called James B. Bradwell, who testified in substance as follows:

677 When Mr. Van Arman was in jail to see Hopps I went with him and came with him, and we were both together when talking with Hopps. No plan or suggestion was made in regard to having Hopp's brother declared insane; I don't recollect that Ralph's name was mentioned.

The Defence called Dr. Henry Wing, who testified in substance as follows:

678 There was no appearance of liquor about Mr. Hopp's at any of the times I examined him. Unless a person was laboring under the influence of very decided disease of the brain it could not be possible that he could be at the same time under the influence of liquor, and

679 have the small soft nervous pulse which he had when I examined him. The effects of stimulants is to increase the force and fulness of the pulse when the subject is in ordinary health ; the increase of speed and frequency is not so marked. It makes a full high pulse, and his was very soft and small. Take a pulse which is feeble, and a heart which is feeble and administer alcohol—by increasing the force of the pulse it would diminish its frequency. The ordinary law would be changed in that respect, and the tendency of liquor would be to equalize that relation between pulsation and respiration, which I before stated was very much disturbed. My attention to it was not drawn to whether he was under the influence of liquor at the time, but in putting my ear to his chest, examining his abdomen and pulse, my impression is, I could hardly have failed to know it if he had had any liquor.

The Defence called Dr. Andrew McFarlane, who testified in substance as follows :

680 I have heard all the testimony given in this case since I was last examined, and heard nothing in the testimony inconsistent with the opinions I advanced when on the stand. My opinion is the same. I think by the testimony presented, I am better able than I was before to arrive at the history of the case. I see the commencement of it better than I did ; the causes which have led to it, and the manner in which the disease was developed. Those facts did not appear so well in the former testimony as in that last offered.

The Defence called Dr. Ernst Schmidt, who testified in substance as follows :

682 I am a physician ; was connected with Insane Asylums four years
683 in Germany ; I have examined the prisoner, but the short time I spent
with him is not sufficient to give an opinion upon. I had a conversation
with him of about an hour, and it is my opinion that he is insane
in some degree. He is wandering and goes from one thing to another ;
the reason he gives bears no proportion to the fact. If a man kills his
wife in such a cruel manner as Mr. Hopps did, there is for a physician
684 something about that, there is not the proportion between the act itself
and that reason. I asked him if he had any proof against his wife ; he
made me a talk of about half an hour, and he did not give me one single
fact ; and so it is fiction, and it seems his mind is deranged. It
seems that he drank some, but it is very possible that drink is the effect
of insanity ; it is so in some cases. When I saw him at the jail I could
not see that he had drunk at that time. His heart and pulse are not
685 quite healthy ; he has some enlargement, which would affect his circu-

687 lation; if a disease of the valves of the heart it would make the pulsations softer and weaker.

CONCLUSION OF THE EVIDENCE.

688 And therefore, this being all the evidence given to the jury, in said cause or prosecution, and the counsel for the people and the prisoner having argued the case before the jury, the following instructions were asked for on behalf of the people, as follows :

1. Murder is defined by the laws of the State to be the unlawful killing of a human being, in the peace of the people, with malice aforethought, either expressed or implied.

2. Malice shall be implied, when no considerable provocation appears, or when all the circumstances of the killing show an abandoned or malignant heart.

689 3. The jury are instructed that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be found to their satisfaction; and the jury are further instructed that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act charged in the indictment in this case, the defendant was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that the use of the instrument described in the indictment upon the person therein described in the manner therein alleged was wrong.

4. Insanity, produced immediately by intoxication, does not destroy the responsibility of the defendant, if the jury believe from the evidence that the defendant, when sane and responsible, made himself voluntarily intoxicated.

5. If the jury believe from the evidence that the defendant, when free from the influences of intoxicating drinks was uniformly sane and rational, and forbore all violence towards his wife, and that for a series of years, prior to the commission of the act in question in this cause, the defendant, when in fits of intoxication, was accustomed to use violence upon her and knew that such violence was the immediate result of such intoxication, and that, having such knowledge, he voluntarily made himself intoxicated on the day of committing the act of stabbing

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his wife, with the instrument charged in the indictment, and that such act was the immediate result of such intoxication, then the defendant is responsible for the crime, although he might have been laboring under some insane delusion at the time.

The Court then gave to the jury, upon its own motion and as in behalf of the people, the following instructions:

Given.

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Given.

A crime is defined as a violation of a public law, in the commission of which there shall be an union of act and intention, or criminal negligence. Intention is manifested by the circumstances surrounding the act, indicating its motives or object, and the sound mind and discretion of the accused. A person shall be considered of sound mind, who is neither an idiot nor a lunatic, nor affected with insanity, who has a knowledge and consciousness of the distinction between good and evil. In this case the homicide is admitted, but the accused alleges that at the time of the commission of the act his mind was so affected with insanity that his moral sense and will were subjected by it, and he was oblivious to the moral quality of the act. The law presumes the sanity of every person charged with a criminal act, and that such act is the result of volition and will, influenced by motives acting upon the mind. Hence, the burden of overcoming this presumption rests upon the accused; but when insanity is satisfactorily shown, it is the duty of the jury to acquit, as in such case there is an absence of intention, which is essential to a criminal act.

Given.

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Insanity is generally classified into moral and intellectual, and is either general or partial. Moral insanity consists in a disorder of the moral affections and propensities, without any symptom of delusion or error impressed upon the understanding. Intellectual insanity, on the contrary, is a disorder of the intellect and is characterized by delusion or hallucination of mind, manifesting itself either in the belief of things naturally impossible, or of facts so improbable when considered in connection with the evidence upon which the belief is formed, that no person in his senses could believe them.

But these general definitions do not afford to an unprofessional mind a sufficiently clear and comprehensive idea of insanity thus classified and defined, to enable it to apprehend those distinctions of science and law, which are necessary to a formation of a judgment in this case. And it is the duty of the court, where such tremendous issues are involved as here, that these distinctions should be marked and defined with the utmost care and exactness.

Given.

The mind in its more general sense indulges not only the powers of the understanding, as perception, reflection, imagination, memory, will and judgement, but also the moral sense or conscience, the disposition, propensities, affections and passions. The passions, inclinations, and propensities indicate the state or impulses of the mind, and constitute what are termed the moral power, as contradistinguished from the

intellectual. The action of the intellect can only manifest itself to the observation of others through the action or conduct of the individual. All actions proceed from the passions or from motives acting upon the mind, and influencing the judgment and will. We judge of the character of a man by his conduct, and as that is regulated by good or evil impulses, we determine the moral constitution of his mind. When, therefore, we speak of the moral powers, we are understood to refer to the propensities, dispositions, or temper of the mind, whilst on the other hand, when we refer to the intellectual powers, we refer to the faculties of judgment, will and conscience.

Thus constituted man is regarded by law as a free moral agent, endowed with the power of volition or choice among different motives presented to the mind, and of determining whether his conduct shall be good or evil. It also assumes that every man has the power of determining whether an act is right or wrong, and it is upon the existence of this moral sense and freedom of will that all law, human and divine, bases its authority, and its sanctions. If a man were obliged to do exactly what he does, if in other words he has not liberty of choice between good and evil, and his judgment and will must yield to any motive, impulse or passion, acting upon it, then the whole system of criminal jurisprudence is founded upon an error, both fundamental and ineradicable. Free moral agency implies the entire subordination of the passions and propensities or moral powers to the will, and the power of the will to control them, and assumes that all the outward acts and conduct are directed or suffered by the will, and hence that they are voluntary. On this principle society in all its relations reposes. It is applied without regard to the moral training of the individual in youth, or to irritability of disposition arising from disease, or from temper or passions habitually indulged. However perverted the moral sense, or strong and uncontrolable the passions, the individual is nevertheless presumed to be possessed of a sense of right and wrong, and the power to control the will and to act from choice, and this presumption cannot be rebutted by any evidence, which falls short of proof of insanity.

We may now perceive more clearly what is meant by insanity both mental and moral. And first, of intellectual insanity :

The characteristic mark of this affection or disorder of the intellect, is delusion or hallucination, and is either general or partial. In general mania, the hallucination extends to all kinds of objects and subjects, and generally manifests itself in frenzy or raving madness. In monomania or partial insanity, the hallucination is confined to a single object or a small number of objects. This is the species with which we have here to do. Its true legal characteristic is delusion, or that state of the mind, which is indicated by a belief in something in itself morally impossible ; as that trees walk, statues nod : or in the belief of a state of facts in their nature morally possible, but of which there is an entire absence of all reasonable grounds of belief. It also sometimes

manifests itself in a belief of a direct revelation, and a controlling and irresistible sense of obligation to obey the revealed will.

Given. This state of the intellect indicates the existence of a disease, which, in its effect, subjects the will, judgment and conscience to the imagination with respect to the subject of the insane belief. The influences of such belief or delusion over the mind is much greater than 696 the power of any conviction or belief in the mind of a sane person, and directs and controls the will, judgment and moral sense with inconceivably greater force. The individual thus affected may be able, in most other respects, to reason correctly on any subject beyond the range of his hallucination, and be not unfitted for the intelligent care and oversight of his business. Nor is the power of judgment or reasoning disturbed in any perceptible degree, even with respect to the subject of the delusion, and his conduct and reasoning are as logical and rational with respect to it as if the facts constituting the delusion were real and not imaginary.

The law as well as medical science recognize all these forms of mental insanity, and has certain established principles applicable to the subject.

Given. For obvious reasons a higher degree of insanity must be shown to absolve a party from the consequences of criminal acts than to discharge him from the obligation of his contracts.

697 A man is not to be excused from responsibility if he has capacity and reason sufficient to distinguish between right and wrong as to the particular act he is then doing—a knowledge and consciousness that the act is wrong and criminal. But in these cases it is not deemed sufficient that the individual has a general knowledge that the act is wrong in its nature, because this general knowledge may well consist with delusion as to the moral quality of the act, when considered in reference to the person and to the circumstances believed to exist, and which in themselves constitute delusion or insanity. There may be an insane delusion with respect to one's moral duty under such circumstances, as well as in the belief of facts, which is the primary evidence of unsoundness of mind. From whatever cause the power of the will and conscience may be subjected or perverted by an insane affection, self agency ceases, and acts done under the influence thereof are neither criminal nor punishable, because they are not considered voluntary. For this reason the law will excuse homicide on the ground of partial insanity, in the following cases :

Given. *First*—Where the accused takes life under circumstances, when the act would be excusable if the facts constituting the delusion had an actual existence, and were not mere hallucination—as in defence of life or habitation.

698 *Second*—Where the act is done under a delusive belief of a divine
 Given. command and overruling necessity, or under a controlling sense of
 moral duty, by which the understanding and conscience are deluded,
 with respect to the moral quality of the act.

Given. *Third*—When the delusion is only that a wrong has been done
 him in a matter which, if true, would not excuse homicide, yet at the
 time of the commission of the act, his mind is so affected by the dis-
 ease, as to incapacitate him from knowing that he is doing wrong, and
 he is unconscious of wrong. But when this knowledge exists at the
 time, the accused cannot be acquitted on this ground, as in such case
 the act will be treated as one of revenge.

Given. Secondly, of moral insanity as defined by those medical writers
 who treat of this disease, it consists in the existence of some of the
 natural inclinations, dispositions or propensities in such violence, that
 it is impossible not to yield to them. It is attended with no delusion
 or disorder of the intellectual faculties in any notable degree, and the
 mind is conscious of right and wrong while under its influence. And
 699 yet, notwithstanding this consciousness, the mere violence of the incli-
 nation to commit the act is so great as to overthrow all the power of
 resistance which the mind may be able to oppose to it; under its influ-
 ence, the individual ceases to be a moral agent. When manifesting
 itself in the homicidal form the inclination and desire to kill is often in-
 discriminate in its violence, sometimes directing itself against the lives
 of persons indifferent to the accused as well as against objects of af-
 fection and friendship, and it is impossible for him to restrain the un-
 controllable fierceness of the impulse or desire. The act is never influ-
 enced by revenge or any of the passions, or a desire to gain temporal
 advantages from the homicide. It is said to overcome the power of self-
 control, and to act without motive of any kind, and frequently without
 premeditation, and consists in the mere violence of the propensity, or
 disposition by which the will is overcome.

700 Most certainly if this form of insanity has any existence, the doc-
 Given. trine of free agency can have no application to one affected with it. It
 is at least of exceedingly rare occurrence, and its manifestations as it
 has been observed bear striking resemblance to crime. Nevertheless it
 is recognized by the medical profession, though it has been rejected by
 the English courts of justice, as apocryphal, and has been doubted,
 by some courts of very high authority in this country. And what is
 of more consequence to us, it is impliedly recognized by our own. It
 is true, it was not adopted by our own court in the case referred to
 (Fisher vs. People, 23, Ills.) upon some consideration, yet it must be
 regarded as the law for the purposes of this trial. But in saying this,
 it is my duty to add, that it was regarded as so perilous in the adminis-
 tration of criminal justice, by the court which first promulgated it, as a
 principle of legal science, as to induce the observation, "That the doc-

701 trine which acknowledges this mania is dangerous in its relations, and can be recognized only in the plainest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance," or from its circumstances to bear unmistakable marks of destructive, and uncontrollable impulse. "Where this affection," says Dr. Ray, whose authority is the chief support of this opinion, is "alleged in excuse for crime it must be proved, First, that it was really present; Second, that it had arrived to that stage in which its impulses are irresistible; Thirdly, it should be the exclusive cause of the criminal act." Governed by these rules there can be but little difficulty in determining the presence, or absence, of this disorder, as the cause of the criminal act. It may be said that there can be no reliable case of moral insanity, when any strong motive or passion, or other exciting and adequate motive is found in the evidence. Hence when the criminal act can be traced to a desire of gain, or to hatred, revenge, jealousy or any strong passion excited by drunkenness, the act must be ascribed to such motive or impulse, and not to that irresistible impulse which is said to constitute the distinguishing characteristic of this disease.

Given. In applying the principles of the law of insanity as thus defined, to the particular circumstances of this case. The Court instructs the jury, on the part of the people, and their behalf, that if they believe from the evidence

702 *First*—That the mind of the accused was affected with insanity only while in a state of drunkenness, and that with a knowledge of this predisposition, and of right and wrong, the accused voluntarily put himself in that state and committed the act with which he is charged, the act in that case is criminal in the same degree, as if there had been no predisposition to insanity when under the influence of drunkenness.

Given. *Second*—That even though the jury should find that the accused was affected with insanity by reason of a delusion, in regard to wife's fidelity, yet if they further find that at the time he committed the act he had a perfect knowledge of right and wrong with regard to the act itself, and was under no delusion with respect to its moral quality, then the law regards him as a moral agent in the commission of the crime and subject to its penalty.

Given. *Third*—That insanity produced immediately by intoxication does not destroy the responsibility of the defendant, if the jury believe from the evidence that the defendant, when sane and responsible, made himself voluntarily intoxicated.

Given. *Fourth*—That if the jury believe from the evidence that the accused when free from the influences of intoxicating drinks, was uniformly

sane and rational and forbore a'l violence towards his wife ; and that for a series of years prior to the commission of the act in question, he was accustomed, in fits of intoxication, to use violence upon her, and knew that such violence was the immediate result of such intoxication, and that having such knowledge, he voluntarily made himself intoxicated, on the day of committing the act, and that such act was the immediate result of such intoxication, then the defendant is responsible for the crime, although he might have been laboring under some insane delusion at the time.

Given. *Fifth*—That if the act was done by the accused, under the influence of passion, excited by drunkenness or jealousy, or hatred, without provocation on the part of the deceased, or any danger to life or limb, that in that case the accused is not entitled to be excused from the consequences of the act, on the ground of moral insanity, however strong or irresponsible the passion may have been under which the act was perpetrated.

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Given. *Sixth*—That if the jury find that the accused was actuated by malice, jealousy, or other feeling of hatred, or from passions excited by drunkenness at the time of the killing, then he is guilty of the crime of murder, though the jury may find that he was affected with an insane delusion with respect to his wife's chastity.

To all and each of which instructions the prisoner's counsel then and there objected, which objection was by the Court overruled, and the prisoner's counsel then and there excepted to such ruling. And thereupon the prisoner, by his counsel, asked the Court to give the following instructions to the jury :

INSTRUCTIONS FOR THE DEFENCE.

Given in *First*—That after legal insanity is once proved to exist prior to another. the act of killing, the burden of the proof is then upon the prosecution to show that the act was committed in a lucid interval.

Given in *Second*—That if the jury believe from the evidence that the prisoner at or before the killing was laboring under an insane delusion in another. regard to his wife's infidelity, and that, moved by the promptings of 705 that insane delusion, he killed his wife, then they should acquit him.

Given in *Third*—That if the jury can reconcile the facts and evidence substance. tending to show drunkenness in the case, with any theory of innocence, such as insanity or any other theory, it is their duty to do so and exclude the theory of drunkenness from the case.

Fourth—If the jury can reconcile the facts and evidence tending to show drunkenness in the case with any theory of innocence, it is their duty to do so and exclude the theory of drunkenness from the case.

Fifth—That if the jury believe from the evidence that the prisoner killed his wife by reason of an insane and diseased mind, and that he would not have killed her but for such insanity, then they must acquit the prisoner.

Sixth—That if the jury believe from the evidence that at the time of killing the prisoner was laboring under such a state of mental disease or insanity as not to comprehend the true moral quality of the act he did, in relation to its being right or wrong, then they should acquit the prisoner.

Seventh—That if the jury believe from the evidence that the prisoner at the time of the killing was subject to and laboring under the disease of insanity to such an extent that it overbore his reason, conscience, and understanding, in relation to the act he did, that then they should acquit.

Eighth—That if the jury believe from the evidence that the prisoner at the time of the killing was insane, and laboring under a fixed and insane delusion as to his wife's infidelity and want of virtue, and that such insane delusion operated so powerfully upon his reason, understanding, and will, as to render him incapable of perceiving, or being guided, by the ordinary principles of right and wrong in relation to the act he did, that then they should acquit the prisoner.

Ninth—That if the jury believe from the evidence, that the prisoner at the time of the killing, was insane, and laboring under a fixed and insane delusion, as to his wife's infidelity and want of virtue, and that such insane delusion operated so powerfully upon his reason, understanding and will, as to completely master and overthrow the power of the prisoner in doing the deed charged, that then they should acquit him.

Tenth—That if the jury believe from the evidence that the prisoner, at the time of the killing was insane, and laboring under a fixed and insane delusion, as to his wife's infidelity and want of virtue, and that such insane delusion operated so powerfully upon his reason, understanding and will, as to render him incapable of perceiving or being guided by the ordinary principles of right and wrong, in reference to the act he did, or so operated on his reason, understanding and will, as to so overthrow them that he was irresistably impelled to

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the deed, that then it matters not what were causes which led to, created or excited the said insanity, and that they should acquit the prisoner.

Given in another. *Eleventh*—That if the jury believe from the evidence, that the prisoner was insane at the time of the killing, and was impelled to do the deed by an insane impulse beyond his power of controll, that then they should acquit.

Refused. *Twelfth*—That drinking ardent spirits is not unlawful, and that although the law does not excuse the acts of crime, merely because they were committed while the party is under intoxication, yet that insanity caused and stimulated either in whole or in part by liquor is as good a defense for alleged criminal action, as insanity caused by anything else.
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Refused. *Thirteenth*—That if the prisoner had been for some time prior to the killing, laboring under insanity, and an insane delusion in regard to his wife's infidelity, which in law would render him irresponsible for the act of killing charged against him, and in fact did kill his wife under and by reason of his said insane delusions; that then the fact that the prisoner habitually, and even on that day, drank liquor which might have, or did, excite his said insanity and delusion, will not operate to destroy or overthrow the defence of insanity, but the jury should acquit the prisoner, notwithstanding such fact.

Given in substance in another. *Fourteenth*—That if the jury believe from the evidence, that the act of killing charged was the offspring and consequence of insanity, in the prisoner, and that he would not have committed the act at all, but for his insanity, they should acquit the prisoner.

Given in substance. *Fifteenth*—If the jury shall believe from the facts given in evidence, taken in connection with the opinions of the professional witnesses, that the accused had at the time of the alleged offence, been for a considerable time laboring under a monomania, attended by delusion, creating and indicating such a diseased state of the prisoner's mind, that the act of killing was but an outbreak or paroxysm of that disease, which for the time being, overwhelmed and suspended reason and judgment, then the accused was not an accountable agent, and the jury must acquit him.
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Given in substance. *Sixteenth*—If the jury shall believe from the evidence that the respondent at the time of the alleged offence was laboring under a partial insanity, accompanied by that state of delusion the known tendency of which is to cause the mind suffering under it to break out into sudden paroxysms of violence, venting itself in homicide and other violent

710 acts towards friend or foe, and that the outbreak in this instance was of such a character that for the time being it must have overbore memory and reason, then the act of killing was the result of disease and not the act of a mind capable of choosing, and they must find the respondent not guilty.

Seventeenth—The jury will acquit the respondent if they shall believe from the evidence that the act of homicide was not the act of a person acted upon by motives, and governed by the will, but was the result of an uncontrollable impulse, and that that impulse was the outbreak of a diseased mind, for a long time previous laboring under a monomania, accompanied by delusion.

Eighteenth—If the jury shall believe from the evidence that the accused, at the time of the act alleged, was in a diseased and unsound state of mind, that such disease existed in so high a degree that for the time it overwhelmed reason, conscience, and judgment, and that in committing the homicide he acted from an irresistible and uncontrollable impulse, then they will acquit the respondent.

That the drunkenness which the law speaks of as not excusing crime is the drunkenness of a sane mind and does not refer to the drinking of a man who is already insane.

711 That if at the time of the killing charged, the prisoner was insane within the law and was laboring under an insane delusion whose probable tendency was to induce the prisoner to commit the homicide, and that under the influence and by reason of the said insane delusion he killed his wife, as charged, the prisoner should be acquitted, notwithstanding the prisoner may have or did drink liquor on the day of the killing.

But the Court refused to instruct the jury as asked by the prisoner's counsel in either instruction, but gave in lieu thereof the following instructions:

And the Court, on the part and behalf of the accused, further instructed the jury.

First—That if they believe from the evidence that the accused was, at the time of the killing, not drunk but laboring under a fixed and insane delusion as to his wife's infidelity and want of virtue, and that such delusion operated so powerfully upon his understanding and will as to render him incapable of perceiving or being sensible of the moral quality of the act, or knowing and acting upon the principles of right and wrong in relation to the act, then such insanity entitles him to an acquittal, on the ground that he was not a free moral agent.

Second—That if they believe from the evidence that the act of killing was the offspring and consequence of insanity in the accused,

and not induced or stimulated by drunkenness, hatred or malice, and that such insanity was the offspring of delusion with respect to his wife's chastity, and so great as to overcome the will, and obliterate all consciousness of right and wrong with respect to the act, or induce a fixed and insane belief that its commission was one of duty, that the jury should acquit, although they may believe that the accused was capable of reasoning correctly and impressed with clear perceptions of right and wrong with respect to the act of killing in general.

Given. *Third*—That if they believe from the evidence, that the accused was laboring at the time of the alleged offense, under a partial insanity, the known tendency of which is, to impress the mind with the belief of facts which if true, would excuse homicide—as that it was necessary in defense of life, and overcame the reason and will, and that such insanity was not the direct effect of drunkenness, then the act of killing must be considered as the effect of disease, and not the act of a mind capable of volition and choice.

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Given. *Fourth*—That if they believe from the evidence, that the homicide committed by the prisoner was not the act of a man operated upon by motives and governed by the will, but the result of a mere uncontrollable impulse, communicated to his mind from insanity of the moral powers, and not by motives of hatred, jealousy or drunkenness, or other passion acting upon the mind, and impelling to the act, then the act was one of moral insanity. But in determining this question the jury should have reference to the more exact definition of moral insanity given in previous instructions on this subject.

Given. *Fifth*—That if they find from the evidence, that the accused was affected with insanity at the time of the killing, and that the mind was not affected with any passions caused by voluntary drunkenness, and was only impelled by insanity, then the defendant stands excused on the ground of insanity, and in determining this question, the jury should carefully consider the evidence bearing upon it.

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Given. *Sixth*—That if they find that he was affected with mental insanity, occasioned by past excesses of drunkenness, and was not under the influence of drunkenness at the time of the homicide, then the act is excusable on the ground of insanity. Where a man is insane he is not punishable as a murderer, although such insanity be remotely caused by undue indulgence in spirituous liquors. But it is otherwise if he is intoxicated at the time, and his insanity be directly caused by the immediate influence of liquor.

Given. *Seventh*—That if the jury are convinced from the evidence that the killing was the direct and immediate effect of an insane delusion

715 concerning his wife's want of chastity, so operating on and affecting his mind as to control the will and obscure all perceptions of right and wrong with respect to the act, and that such state of mind was not the effect of passions excited by ardent spirits, the act is excusable on the ground of insanity, though he may have been drinking. But the conviction of the mind should be clear and strong, and care should be taken not to confound passions excited by liquor with those which are the natural effects of insanity. For if insanity existed, but would not have manifested itself in homicide if it had not been stimulated by excitements caused by liquor, then the act is not excusable on the ground of insanity. But if the jury can reconcile the evidence tending to show drunkenness, with a conviction of mind drawn from the evidence that the act was one of insanity and not the effect of liquor, it is their duty to refer the act to insanity and acquit the prisoner on that ground.

Given. *Eighth*—That if the jury should find that the accused before the commission of the act was affected with insanity of a nature to obscure and overcome his moral perceptions with respect to the act committed, then the burden of proof is upon the prosecution to show that he was not affected with such insanity at the time of the killing.

716 Given. In conclusion the Court instructs the jury, that it is their duty to give a careful consideration to all the facts, and opinions in proof, throwing light upon the question of insanity, on this subject, medical opinions and evidence, are entitled to attentive and respectful consideration. And if the act is proved to the satisfaction of the jury by the weight and preponderance of evidence, to have been one of insanity only, the prisoner is entitled to an acquittal, though the defense should not be proved beyond all reasonable doubt.

To which refusal to give the instructions asked by the prisoner's counsel, and each of them, as also to the giving of those, and each of those, so substituted for them, the prisoner's counsel then and there objected, but such objection was overruled by the Court, and to such ruling the prisoner's counsel then and there excepted.

And thereupon the jury retired to consider of their verdict, and, after being out some time, returned into court with the following verdict:

We, the jury, find the defendant guilty in manner and form as charged in the indictment. REUBEN TAYLOR, *Foreman*.

717 Whereupon the prisoner's counsel moved the court to set aside the verdict, and award a new trial in the case, and filed the following motion and reasons:

1st. Because the verdict is contrary to law and evidence.

2d. Because the Court misinstructed the jury and refused to give instructions asked by the prisoner, which were law.

3d. Because the jury were permitted to separate improperly, (after they were sworn.)

4th. Because the jury were allowed to have improper [communication with others.

718 5th. Because evidence was improperly allowed to be given to and withheld from the jury.

6th. Because evidence was given to the jury during the absence of some of their number.

7th. Because the jury were permitted improperly to separate in the custody of unsworn officers.

8th. Because some of the jurymen, not in charge of an officer, were separated from the rest.

9th. Because of newly discovered evidence.

10th. Because the instructions of the Court were calculated to confuse the jury.

11th. Because of the surprise, sickness and absence of one of the prisoner's counsel.

The defendant then filed in said cause certain affidavits, in substance as follows :

719 E. W. McComas says that soon after his engagement as counsel
and about September 1st, 1862, he met Dr. J. R. Gore, County Physi-
cian of Cook county, and requested him to observe and occasionally
720 examine the prisoner as to his mental condition, which said Gore prom-
ised to do, relying upon which, he felt it unnecessary to take further
steps in that behalf with other physicians until some time afterwards.
That said Gore subsequently went as a surgeon in the United States
army to the State of Tennessee, of which fact this affiant had no knowl-
edge until after he had left the State of Illinois and about the time of
this trial. That he at once wrote to said Gore to come on, or at least
send a sworn statement of what he knew about the case. That the first
he heard from said Gore was after this trial commenced. Nor did he
721 know until then what said Gore could testify to, and that the same is
important to the prisoner.

The defence also filed, together with the foregoing affidavit, the following letter from Dr. Gore :

IN CAMP, MEMPHIS, Tenn., Dec. 14, 1862.

722 E. W. MCCOMAS, ESQ.—*Dear Sir*: I returned to Memphis last evening with the 127th regiment after a march on foot of one hundred and twenty miles, out and return, and have since received two letters from you requesting my attendance, and that of Col. Van Arman, on the trial of Mr. Hopps on the 18th inst. I am sorry to inform you that the Colonel is very sick with pneumonia at one of our hotels, and we are under marching orders for the vicinity of Vicksburg. The time set for our embarkation by boat is 18th of the present month, consequently neither of us can comply with your wish and our own inclination to be at the trial. He requests me to tell you to get, if possible, the trial postponed. I join him in the request, and hope it may be done. You request me, if I cannot attend in person, to send you a statement of all I know of the case. This I find almost as impossible at the present moment as to attend in person. The many sick on hand and the hasty preparation for such a campaign as this promises to be down the river, so absorbs my mind that I cannot now recollect and detail all the incidents of my observation for the three months following the first of July when I think the inquest was held and my acquaintance with Hopps commenced. At that time I distinctly remember he said he wished all the facts to be known; confessed the deed and the knife with which he did it. He regretted the necessity for the deed, and said he had foreseen it several years and had tried to avoid the necessity. He had built a better house than he wanted, worked harder than any man, and furnished his house more expensively than he wished, to gain back the affections of his wife, which were always running after other men, but all he could do had no effect on her. He said any dispute or cross word from any person except her he could bear without resentment, but anything unkind from her enraged him beyond control. He said she was one of the best women in the world in every way but this, and this he found out from a man who drank a toast to him on the birth of his boy. The toast he related I do not recollect it, but it was some vulgar thing. This he believed an intimation, and then he noticed for himself and found it true. I rode with him I think nine miles that night in a wagon. He seemed as unconcerned and talked as freely on any subject as a man could do traveling on business matters; but sometimes would commence a history of some event and get on a different subject before finishing his story. I saw him pour out and drink from a jug before he left home, and he drank largely at a saloon of whisky. I think when we arrived at the depot I saw no evidences of intoxication. As to his pulse I never found them less than ninety to a minute during my acquaintance with him, and when inquired of as to his health he always said he was better; frequently said his affliction was great, but hoped he should be able to bear up under it, and

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felt as though the worst were passed through with. I do not mean that all the conversation was connected or at the inquest. I regard him as laboring under a delusion that amounts to unsoundness of mind or monomania.

J. R. GORE.

I have tried, and failed, to find an official to administer an oath, and send this as the substance of my testimony, if I could give it.

J. R. GORE.

The Defence, in support of the above motion, filed the affidavit of Wirt Dexter, which is in substance as follows :

725 I am one of the counsel for the defendant; was employed by him personally; I began preparation of the case for trial, together with E. W. McComas; that we soon found that the case was leading us into new and, to a lawyer, somewhat unusual departments of science, and, therefore, it became necessary to divide the various matters to be investigated, which, so far as practicable, was done; that the same course was observed in arranging for final argument of the cause; that on Tuesday preceding the argument, and at least a day before the evidence was concluded, I was taken suddenly ill, and was unable to further attend at the trial, in consequence of which misfortune the points to be specially presented by me were only partially argued to the jury, if at all.

The Defence, in support of the above motion, filed the affidavit of George Buckley, which is as follows :

727 Says that he was present during the trial, and was present during the giving in of evidence to the jury on the trial on one occasion when one of the jurors was absent; that he remembers the juror leaving the jury box, and that subsequently his attention was called to the fact that evidence was going on before the jury in the absence of the said juror; how much of such evidence had been given at the time his attention was so called to the fact, he cannot say, but he knows that after his attention was so called to the fact, and before the said juror returned into court, considerable evidence was given, chiefly touching a conversation which the prisoner had with the witness concerning the wife of the prisoner, and that the witness was both examined and cross-examined during such absence to some extent; and further saith not.

In support of the above motion, the Defence filed the affidavit of Edward Martin, which is as follows :

728 Says he was present in the court-room on one of the days whilst this trial was in progress; that on that occasion one of the jury-

men, named Reuben Taylor, asked leave to go out, which was granted and thereupon said Taylor left the jury box, and was absent some little time; that during the absence of said Taylor as aforesaid, the prosecuting attorney, Mr. Knox, called a witness on to the stand, and examined him, and after said witness had testified upon Mr. Knox's examination he was cross-examined by Mr. McComas, of counsel for the defence; that such examination and cross-examination occurred during said Taylor's absence from the jury box; and it is this deponent's best impression and belief that said witness was about being discharged from the witness' stand as Mr. Taylor returned to the jury box.

In support of the above motion, the defence filed the affidavit of Stuart Harvey, which is as follows :

Says that he is a lawyer, practicing in Cook county aforesaid; that he was present during a good portion of the time the above indictment and cause was being tried before the jury; that on one occasion during the trial one of the jurors in the cause was absent from the court-room for some time, and that during his absence evidence and testimony was given to the jury by a witness for the prosecution.

In support of the above motion, the Defence filed the affidavit of N. Allen, which is as follows :

Says that he is a lawyer, residing in Cook county, and was present during the trial of the above cause before the jury part of the time; that he remembers distinctly that on one occasion during the trial one of the jurors was absent from the court-room for some time, and that during his absence, as aforesaid, a witness was examined and evidence given to the jury in the said cause by the prosecution; and further saith not.

The Defence also filed the following affidavit of Bernard Stampojski :

Says that he was present during the trial of the above-named cause against William Hopps for murder; that during the trial one of the jurors left the court-room, and was absent for some time, and that during his said absence the prosecution gave evidence to the jury, and examined a witness for the prosecution.

The People filed the counter-affidavit of Reuben Taylor, which is as follows :

Says he was one of the jurors on the trial of the above entitled cause at the last term of this court; and further says that he was ab-

732 sent from the jury box, whilst said cause was being tried before said court, upon only one occasion; that deponent, being under the necessity of stepping below, waited until the witness who was on the stand had finished his testimony and was leaving the stand, whereupon deponent asked permission of the Court to step below for a few minutes; that the Court gave such permission, and, in the company and in the immediate charge of an officer, deponent went below, but was not absent to exceed three minutes; that deponent did not leave the jury box on any other occasion during the progress of said trial, except at the regular adjournments of the Court; that at one time during said trial deponent, by the permission of the Court, and in the presence of an officer, spoke to E. W. Evans, Esq., only on matters of business; and again, in the same way, and under such permission, and in the presence of an officer, deponent stepped to the west end of the seat occupied by the jury, and spoke a word or two on business matters with one J. P. Brooks; that in neither of the last mentioned instances was there any testimony given whilst deponent was speaking to said persons;

733 that in the first instance last mentioned deponent stood up in his place in the jury box and spoke to said Evans; in the other instance, when he spoke to said Brooks, deponent did not leave the platform of the jury box, and occupied only a moment or two; that in neither of said instances was there anything said or done which had any reference whatever to the case on trial, directly or indirectly, by this deponent, or either of the said persons above mentioned.

The People filed the counter-affidavits of John B. Rice and Arnold Bigelow, which are as follows :

734 Say that they were members of the jury on the trial of the above entitled cause; that they have heard the affidavits of William A. Downs, Bradley B. Begole, John Gay, Thomas Shergold, and Robert Scott, also that of Reuben Taylor, read and know the contents of the same, and each for himself says that he recollects the instances of the said John Gay and Reuben Taylor leaving the jury box to step below, as therein stated, and that such absences are the only ones that occurred whilst the court was in session in the trial of said cause, according to the best of his recollection and belief; and each for himself says that it is his best impression that no testimony was taken in said cause during the absence of either said Gay or said Taylor; that being aware of the absence of the said Gay and Taylor at the time it occurred, and being aware that taking testimony in the cause whilst a juror was absent would have been highly improper, each says that he believes that if any testimony had been taken during the absence of either of said jurors it would have attracted deponents' attention at once.

The People filed the counter affidavits of William R. Downs, Bradley B. Begole, John Gay, Thomas Shergold and Thomas Scott, which are as follows:

735 Say they were jurors upon the trial of the above entitled cause at the last term of this court; that the only persons who left the jury-box during the progress of said trial were deponent John Gay, and Mr. Reuben Taylor, and deponents; each say that upon one of the witnesses in the cause closing his testimony, the said Reuben Taylor asked permission of the Court to step below a moment; that such permission was given, and the said Taylor went out in charge of an officer, and in a very short time returned to his place in the jury box, and deponents each say that he can with confidence and positiveness say, that no witness was examined in said cause, whilst the said Taylor was so absent from the jury box, and the said Gay says that before leaving the
736 said jury box as aforesaid, he asked permission of the Court to step below, which was granted; and deponent went in company and under the charge of an officer; was absent only three or four minutes, and returned to his place; and the said William R. Downs, Bradley B. Begole, Thomas Shergold, and Robert Scott, each says that he knows no testimony was taken in said cause during the absence of said John Gay; and the said Robert Scott further says that during the whole of the trial of said cause; his place in the jury box was next to the said Reuben Taylor on the right, and he knows that no testimony was taken during the absence of said Taylor, from said jury box, as aforesaid.

The People filed the affidavit of Joseph Meeker, which is as follows:

737 Says he was one of the jurors on the trial of this cause, and that
738 his seat during the whole of said trial, was next to Reuben Taylor, on the left; that he remembers the instance of said Taylor leaving the jury box to step down below under the permission of the Court, during the progress of said trial; also the instance of Mr. John Gay, who had permission of the Court to go below; that both said Taylor and said Gay left the court under the charge of an officer; were gone but a very short time, and that those two instances were the only ones in which any of the jurors left the jury box whilst said cause was in progress of trial, and that he very distinctly and positively remembers, and can state that the examination of witnesses was suspended upon the said jurors leaving the jury box as aforesaid, and was not resumed in either case until the absent juror returned; that such suspension occurred by the direction of the Court, and in each case when the absent juror returned the counsel for the people, only proceeded upon, it being openly suggested that the juror had returned.

739 The People filed the affidavit of Ulrich Lochbilen, which is as follows:

Says he was present at the trial of this cause, and being bailiff of said court, attended the jury during the whole trial; that he went with Mr. Reuben Taylor down stairs at the time he left the jury box; that the said Taylor went directly and as speedily as possible down to the basement of the Court House, and after a moment or two, went immediately back; that such absence could not exceed three minutes; that he was present with said jury when Mr. John Gay went below in charge of another bailiff, in charge of said jury, and knows that when said Gay left the jury box, all examination of the case was suspended until his return.

The people filed the affidavit of Hosea Hooker, which is as follows:

740 Says that he attended the trial of this cause most of the time, and sat within the bar of the court where he had a fair view of the jury. That he recollects distinctly of two of said jury going from the jury box under permission of the court and charge of an officer. That one of said jurors who went out was Mr. Reuben Taylor, whom deponent knows well; that the other was John Gay; that neither of said jurors was gone but a very few minutes; that deponent had his mind on the subject at the time of the absence of each of said jurors, and questioned whether counsel might not overlook the absence of such jurors; and deponent states with confidence and positiveness that no evidence was taken in said cause during the absence of either of said jurors or any other juror to deponent's knowledge.

The people filed the affidavit of Wm. L. Greenleaf, which is as follows:

741 Says that he is and for a long time has been Deputy Clerk of this Court, and as such attended the trial of this cause. That when the juror, John Gay, left the jury box in the progress of the trial to go below, by permission of the Court, deponent had his attention called to the fact, and knows that the examination of the case was suspended during the absence of the said juror, which was brief, and was not resumed until said juror returned again to his place in said jury, and further says not.

The Court overruled said motion for a new trial, to which said ruling the defendant then and there excepted.

delivered the opinion of the Court.

Mr. Justice Prescott ^{et al.} The plaintiff in error was convicted in the Cook Circuit Court, on an indictment for the murder of his wife. He brings the record here, complaining of several errors alleged to have been committed to his prejudice, the most important of which, we propose to notice.

He complains, ^{first,} that the Circuit Court would not permit him to give evidence of his uniform good character as a man and ^a citizen.

It was, at one time, a disputed question, whether such evidence could be given in a case where, as in this, the homicide is not denied. Some of the books say, such evidence if offered, ought to be restricted to the trait of character in issue, or, in other words, should bear some analogy to the nature of the charge. 3 G. Ev. § 25.

To the same effect is 2 Rep. on Crimes 784, but yet, he says, the good character of an

accused party is an ingredient which should always be submitted to the consideration of the jury, along with the other facts of the case. ib. 785.

In a case where the defence is insanity, we cannot have a doubt, that evidence of uniform good character as a man and a citizen, is a proper 2 for the jury to consider; whether a person whose character has been uniformly good has, in a lone moment, committed the crime charged. It is undoubtedly true, a lone man, whose previous character has been unexceptionable may commit an atrocious homicide, no doubt may exist of the fact, yet, under his plea of insanity, should he not be entitled to all the benefit which may be derived from the fact of uniform good character, as tending, rightly, it may be, to the conclusion that he could not have been sane at the time the deed was done. Generally, a person of good

Character, does not, of a sudden, fall from a high position to the commission of outrageous crimes, should he do so, would it be an innuendo or forced inference, that he may have ~~been~~ ^{been} ~~been~~ ^{been} affected with insanity at the time? But be this as it may, it seems to be now settled that such evidence in Capital Cases, is admissible.

In the Case of the Commonwealth vs. Hardy 2 Mass. 317, which was a Capital Case, Parsons Ch. J. said, a prisoner ought to be permitted to give in evidence his genuine Character in all Cases. Sewall and Parker Justices said they were not prepared to admit that testimony of genuine Character should be admitted in behalf of ^{the} defendant, in all criminal ~~cases~~ proceedings; but they were clearly of opinion, that it might be admitted in Capital Cases, in favor of life. The same rule was stated

in the case of the Commonwealth vs Webster, 5 Cushing 325. The court there say, it is the privilege of the accused, to put his character in issue or not.

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In 2, Blount and Heard's Leading Cases 159 and notes, the cases are collected and commented on, in which this rule is recognized.

In the case of the people vs Tana, 12 Wendall 78, the court held that evidence of the good character of the defendant on the trial of an indictment, is always admissible though it cannot avail when the evidence against him is positive and unimpeached; but when the evidence is circumstantial or comes from a suspect or impeached witness, proof of good character is important.

We think at least in view of the degree relied on, the evidence of the prisoner's uniform correct bearing, as a man and a citizen, should have been more known

to the boy. A good Character is a most precious possession, and it ought to be permitted, in favor of life, at least, to be ~~to~~ go ~~over the~~ ^{to} ~~rest of~~ ~~with~~, the jury.

The plaintiff in error also complains, that the promotion was permitted to prove that about thirty years before the Commission of the crime charged, he had been engaged in a violation of the Revenue Laws of the Country, by a Career of smuggling goods and property, to and from Canada. The prisoner insists it was not competent to prove this offence against him; that all the facts proper to be proved, should be strictly relevant to the particular charge, and have no reference to any of his conduct, not connected with the charge.

This is undoubtedly true as a general principle, but we think ~~the~~ ^{the} best proof was wanted in this view. The degree being nearity, the volence and unconcern of the

Prisoner at the time he did the fatal act, was made a prominent feature in the case, and inferences were sought to be drawn from it, favorable to the man.

Is it possible, ask his Counsel, that a man who could show so much coolness, self-possession and equanimity, at the moment and after the fatal deed, could be otherwise than insane? To this the people reply, the Prisoner had spent years of his early life in a perilous calling, demanding at all times, great coolness and hardihood and therein had educated his nerves to withstand any shock, in such a school he learned the deportment exhibited by him on the fatal occasion. To account for this coolness and unconcern the testimony of Readley and Phelps was properly received, it being in the nature of rebutting evidence on the point made.

But these are small points, compared to those we must consider.

Aggravated

The prisoner ^{for the} complains, that the Court did not lay down to the jury, correctly, the Law of his Case. That he was prejudiced by the Charge of the Court not coming up, as he alleges it should have done, to the true principle involved in it, by which guilt was established in a Case when guilt could not exist, and for which his life must be forfeited, if the Court has no corrective powers.

The homicide stands confessed. It has never been denied by the prisoner on the contrary, he declared on its commission that it had been long contemplated and was right, that his wife was unchaste. After his arrest, he justified the deed, and has, throughout, exhibited total indifference and unconcern.

His Counsel say for him, he was not of sound mind when the deed was done, and the Court trying the Cause, gave to the jury at great length, its views of the nature of the offense, and prescribed the rule which should govern them in the decision of the Case.

He so not propose to examine
 in detail, the several instructions given by the
 Court for the production or those required when
 asked by the defence. ~~He does not propose to~~
~~show~~ He is not fully convinced what the
 rule, or rules, should be in such cases. The
 results of scientific investigation on this
 intricate subject are so imperfect, as to render
 it very difficult to establish any general ^{rule,}
 by which judicial proceedings of a criminal
 nature, should be governed, when the absence
 of insanity is interposed. Writers on the
 subject treat of several different kinds of
 insanity and of different degrees of the several
 kinds and among them, there is considerable
 diversity of opinion on the same point. They
 furnish, as yet, no true and safe
 guide for Courts and juries, but it is hoped
 as science advances, a rule will be estab-
 lished, which, whilst it shall throw around
 these poor wretched, a sufficient shield,
 shall at the same time place no great
 interest of Community in jeopardy.

It is now generally conceded,
 that insanity is a disease of the brain,
 of that mass of Matter through and by
 which that mysterious power, the Mind,
 acts. Now the Mind is supposed to be
 enthroned, acting through separate and dis-
 tinct organs. These organs may become
 diseased one or more or all, and in
 the degree or to the extent of such disease,
 is insanity measured. A disease of all
 the organs causes total insanity, while of
 one or more partial insanity only. There is,
 it seems, a general intellectual mania, and
 a partial intellectual mania, and a moral
 mania which is also divided into general
 and partial. It is claimed for the prisoner,
 that the species of insanity with which he
 is afflicted, is of the partial intellectual
 order, denominated Monomania, that is
 to say, a mania on one subject, and that
 subject, the infidelity of his wife, in which his
 belief, without the least ground to base it upon,

was supposed as to become a deep seated
 - delusion amounting to mania. In the
 simplest form of this species of mania,
 the understanding appears to be tolerably
 sound on all subjects but those connected
 with the hallucination. *Praxis Med. Lon. 164.*

Premising then, it ^{is} ~~may be~~ ^{truly} said,
 it has been found difficult to establish
 any general rule under which all these
 varieties of insanity may be safely included
 and controlled, when such a degree is
 made.

The rule prevailing in the times of Lord
 Coke, Hale and other luminaries of the Law
 in its not most enlightened days, was, that
 to exempt from punishment, the party charged
 must be totally deprived of his understanding
 and memory. As science advanced, and
 closer investigations were had upon this
 subject, it was held, ~~that~~ if the accused had
 so far lost the use of his understanding as not
 to know right from wrong, he was not res-
 ponsible, and this rule, has been so far modi-

find as to be applied to the murder act for which the prisoner may be indicted.

This rule seems to have been adhered to by the English Courts, and by some of the Courts of this country with occasional departures only, as in Hadfield's case, and other cases - commented upon in notes to 1 leading Criminal cases 93. In Hadfield's case, tried before Lord Kenyon in 1800, it was held, if the accused was laboring under a lunacy and from delusion, that it was his duty to do the act charged, and it was done under the influence of such delusion he was not responsible. But in Wellington's case, tried before Sir John Mansfield in 1812, reported in 5 Carr. & Payne 169, the old rule of Lord Hale's time, was announced and enforced, and an unbroken line of authority is traced to the following.

We do not propose to go into an examination of the various ^{decisions} ~~authorities~~ English and American, on this subject, it being sufficient to say, that we contain, uniform

and definite rule can be gathered from them. In the midst of this uncertainty, with the best reflection and examination we have been able to give to this very important and most interesting question, we have come to the conclusion that a safe and reasonable test in all such cases, would be, that whenever it should appear from the evidence that at the time of doing the act charged, the prisoner was not of sound mind, but affected with insanity, and such affection was the efficient cause of the act, and that he would not have done the act but for that affection, he ought to be acquitted. But this unsoundness of mind, or affection of insanity, must be of such a degree as to create an uncontrollable impulse to do the act charged, by overriding the reason and judgment and abetting the sense of right and wrong as to the particular act done, ^{and} depriving the accused, of the power of choosing between them. If it be shown the act was the consequence of an insane delusion, and caused by it, and by nothing else, justice

and humanity alike demand an acquittal. The statute was designed to ameliorate the rigors of the old rule of the Common Law in declaring that a person "affected with insanity," shall not be considered a fit subject of punishment, for an act done, which, under other circumstances, or disposition of mind, would be criminal.

13 The rule we have endeavored to prescribe, ~~seems~~ seems to fulfil this demand of the statute.

Another question remains as to the proof necessary in such cases, and the duty of the jury thereupon.

In this case the Court instructed the jury, if the act was proved to their satisfaction, by the weight and preponderance of evidence to have been one of insanity only, the prisoner was entitled to an acquittal, though the degree should not be proved beyond all reasonable doubt.

White

~~advances the principle of Equity~~

This instruction, greatly modifies the old rule; but it does not, in our judgment, announce the true principle in criminal cases. In every case criminal proceedings before a jury, without any exception, if a reasonable doubt is entertained of the guilt of the accused, the jury are bound to acquit. Now what is essential to the commission of a crime? Our statute declares to constitute crime there shall be an act or joint operation of act and intention, or criminal negligence. The overt act is one ingredient, the intention another, and their union, indispensable to constitute guilt. Intention is proved by the circumstances, connected with the perpetration of the offence, and the sound mind and discretion of the person accused. The killing alone, under the most aggravated circumstances, will not suffice if sound mind and discretion be wanting. Sound mind is presumed, if the accused is

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Page 393
sig. 25
wanting. Sound mind is presumed, 675
if the accused is

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reverts an idiot, lunatic, "non affected with insanity". If he be affected with insanity then sound mind is wanting, and crime is not established. Sound mind, or sanity then, is an ingredient in crime just as essential as the overt act. Who will deny, if there be a reasonable doubt as to the overt act, that the jury are bound to acquit? Equally ~~to~~ implicative must be the rule if a reasonable doubt be entertained as to the sanity of the prisoner. Sanity is guilt, insanity is innocence, therefore a reasonable doubt of ^{the} sanity of the accused, on the long and well recognized principles of the common law must acquit. Suppose the question was one of identity, would not a reasonable well founded doubt on the point, acquit the prisoner? Suppose an alibi was sought to be proved, and proof sufficient ^{was} offered to create reasonable doubt whether the accused was at the place and at the time, when and where the

offence ^{was} alleged to have been committed,
 is not the prisoner entitled to the benefit
 of that doubt? So if the defence be,
 that a homicide, was justifiable or
 excusable, is not the principle well
 settled, a reasonable doubt will
 acquit? The rule is founded in human
 nature, as well as in the demands of
 justice and public policy. Innocence is the presump-
 tion, guilt being alleged, the state making
 the charge is bound to prove it, the state
 is bound to produce evidence sufficient
 to convince the mind of the guilt of the
 party. ~~And~~ If a reasonable ^{doubt} is raised,
 then the mind is not convinced, and being
 in that unsettled state, whatever the proba-
 bilities may be, a jury cannot convict;
~~for they cannot say~~ It is utterly imperfec-
 ble for them to say the accused is
 guilty, when they entertain a reason-
 able doubt of his guilt.

It is urged by the prosecution, that
 the burden of proof is on the accused
 to make out his defence - But sanity
 being the normal condition, insanity
 must be ~~proven by the accused~~
~~and~~ established by preponderating

evidence.

He so not understand, the
 burden of proof is shifted on the defendant.
 Every man charged with a crime, is entitled
 to claim the benefit of ~~the law~~ all the
 provisions of the law. ~~and which~~ In
 every case of ~~persons~~ ~~murder~~ murder
 the first enquiry is, has the homicide
 been committed - did the prisoner do
 the deed - did he intend to do it - was he
 of sound mind and not affected with
 insanity when the act was done, and
 was the act done with malice ~~express~~ ~~or~~ ~~implied~~
~~express~~ or implied. These are all of them,
 affirmative facts, and must be proved
 by the prosecution. The state avers their
 existence - they are all essential to consti-
 tute the crime, and the state must prove
 them - the burden of proof is on the state.
 But it is said, the state is relieved of the
 burden by proving the prisoner did the
 act, the law implying that he intended
 to do it, and that the presumption is, every
 man is ~~born~~ of sound mind. These are
 but presumptions, and when they are rebutted
 by proof of absence of criminal intention,
 by reason of unsoundness of mind, or a ven-

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Reasonable doubt is raised on the point,
that doubt must avail the prisoner.

Can it be properly said, in criminal cases,
the burden of proof can shift, so long
as the defendant bases his defence, on
the denial of any essential allegation
in the indictment? We think not. The
proposition is founded on every principle
of sound pleading, and ~~principles~~ of justice,
to maintain their allegations, and it is
not in their power to shift this burden
on to the defendant. ^{Commonwealth vs. McKie,} 1 Gray (Mass.) 61

The presumption of innocence is as strong as
the presumption of sanity. The burden of
proof must therefore always remain with
the prosecution to prove guilt beyond a
reasonable doubt, a lucid and substan-
tial doubt not the mere possibility of
a doubt. ~~Where the insanity is proved,~~
~~beliefs are in the evidence, or in the~~
~~in the reason that the prisoner was not~~

The rule here announced, differs
from that laid down in Fisher's case 23. M.
293. In that case he said, sanity being
the normal condition it must be shown
by sufficient proof, that from some cause,

it has ceased to be the condition of the accused. The opinion in that case, was prepared under peculiar circumstances, not admitting of much deliberation, and this point was not pressed upon the attention of the Court, or argued at length. Further reflection has satisfied us, it was too broadly laid down, and that justice and humanity demand, the jury should be satisfied beyond a reasonable, well founded doubt, of the sanity of the accused. The human mind recoils at the idea, of executing a person, whose guilt is not proved, a ~~well~~ well founded doubt of his sanity being entertained by the jury.

In these views we are supported by the case of the State vs. Maulen, 2 Alabama 43; The people vs. Mc Lane, 2 Smith (N.Y.) 58; Palk vs. the State 12 Ind. 170. Other cases may no doubt be found, to the same purport. Be the case few, or many, the principle is nevertheless correct. The first point of the circuit Court is reversed, and the cause remanded, for further proceedings, ~~whenever~~ and a venire de novo awarded.

Judgment reversed.

7. — .112

Wm Hopps

vs

The people

—

opinion by

Press for

1863

3^d Printed
Division of
1863

Recorded 15.12.1863

Filed Feb. 10 1864
Illand
CH

Separate opinion by Mr. Chief-Justice Catow.

~~When I concur with my brethren in a~~
~~separate opinion by Catow C.J., I may be permitted~~
 to make a few suggestions upon a single point in this
 case.
 It is a general rule in all criminal
 trials, that if from the whole evidence
 the jury entertain a reasonable doubt
 it is their duty to acquit, and the reason
 is that it is better that many ~~innocent~~ ~~guilty~~
 persons should be acquitted than that
 one innocent person should be convicted.
 There is a possibility, that an innocent person
 about to be executed innocent of ~~the~~
 crime, produces a ~~murderer~~ in every
 one who is not called to all senses of
 justice ~~and~~ ^{and} humanity, and that all perceptive
 sentiment of civilized man demands
 this rule. — Is humanity, less de-
 manded ^{it} in a case where the de-
 fence is insanity, than where it is ~~innocent~~
 or justifiable homicide? Is it any less
 repelling to an enlightened humanity
 to hang an innocent crazy man than one
 who is sane? His very helplessness commends
 him to the commiseration of mankind.
 One who ~~is~~ ^{is} ~~not~~ ^{indirectly} ~~held~~ ^{held} for murder ~~is~~,
 true I killed the man but I did it in neces-
 sary self defence, shall be acquitted if he
 can raise a reasonable doubt on this
 question, although the preponderance
 of evidence is, and the probabilities
 are, that he was the attacking party, and
 pursued his victim into death, with

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malice aforethought; and shall it be said when the same doubt exists as to the sanity of the prisoner he shall be convicted ^{and} executed! The very suggestion is shocking to a sense of even bounded justice.

The question at last returns, is the prisoner guilty or not guilty? If there is a reasonable doubt of his guilt he must be acquitted. If there is such doubt of malice all agree that he must have the benefit. If he was insane there could be no malice ^{and} hence, to raise a doubt of sanity is to raise a doubt of malice. Sanity is as necessary to guilt as any other fact ^{and} if there is a reasonable doubt of that, there must be a doubt of guilt. Why should there be an exception to this otherwise universal Rule? We can see none in reason, and it is against the fundamental principles of the law. The old Common law is silent on this subject. It is only in modern times that the question has arisen, and the first who held that insanity was an exception to the rule overturned the rule itself, but they could not abolish or destroy it. It still remains ^{and} ~~is~~ ^{it} must well ever

3 remain an unmovable monument
to the civilization ^{and} ~~of~~ humanity of our
age and country. - It is said

It is said, insanity may be simulated.
So may any other fictitious offense be
got up to serve the guilty. The evidence
in this case ^{is} that it is exceedingly difficult
to simulate insanity so as to avoid
detection. It is but very lately that in-
sanity has become a subject of careful
scientific investigation, but it has made
great progress rapidly. This
investigation enables experts to detect
simulated insanity with much more
certainty than could formerly be done.

Shall we regard ^{and} denounce the
results of human study ^{and} research on this
subject while we recognize ^{and} applaud
the advancement of science in all other
directions. Peoples ^{and} governments in all
civilized countries recognize them ^{and} by
the erection of vast asylums for these
unfortunates, where the science can
be carefully studied by those who
will devote their lives to ^{the} investi-
gation of this subject, where very many
by careful scientific treatment
are restored ^{and} become useful mem-
bers of society. - To say that men by

4) Careful study, ^{and} ~~investigation~~ ^{investigation} can acquire no skill on this subject unless the same study ^{and} ~~investigation~~ ^{investigation} will constantly develop new truths on all other subjects would be a daring assumption upon which we cannot consent to honor a fellow man. - At the time the question was first brought before the courts, it may be that it was in some cases difficult to detect simulated insanity. And then the courts may have been induced to overturn the well established law to meet the apprehension, but then desiring to say the least it is very much diminished now.

I am well convinced that we should adhere to the old and well established rules of ^{the} Criminal law and that we should require at least as much ~~the same measure~~ of evidence to convict a crazy man as a sane one.

pp 1
in
the people

September
by Boston

Resol B. 12 P 241

copy

Chicago April 24th 1863

To the Clerk
Supreme Court
Ottawa Ill

Dr Sir

In the case of William Hopps
vs the People to be argued at the
present term - it is arranged between
the undersigned who appear
respectively for the People + for Hopps
that the case shall be taken up
on some day to be agreed upon
by Counsel

Truly Yours
W. Comas & Dexter
For Appellant
W. H. McAllister

For the People Deft in error

People vs.
S
H. S. P.

Capt. & submit

Filed
Apr. 21, 1863.
Holland
Mich.

Demest

684 Walker

Separate and partially dissenting opinion of Mr. Justice

~~Walker~~ I am unable to concur
in all of the reasons assigned by
~~Walker~~ ^{the} majority of the court
^{for reversing} ~~in this case, none of his~~ ^{judgment} ~~conclusions~~
~~at a conclusion, in which I am un-~~
~~able to concur.~~ On the question of
the measure of proof necessary to a con-
viction, when the plea of insanity is
interposed, there may be a conflict
in the authorities. But it will be
in fact all but two cases so far as ^{settled} ~~can~~ ^{be} ~~found~~ ^{found} that the court, ~~and I think~~
~~the~~ might establish the rule, that the
plea must be established by at least
a preponderance of evidence. It is
a presumption lying at the founda-
tion of jurisprudence, as well as all
the business relations of life, that all
men are of sound mind. This presu-
sion cannot be controverted, ~~and this~~
^{and} ~~presumption~~ ^{presumption} to be avoided must be
rebutted by evidence.

The plea of insanity, like all other
special pleas, confesses the act charged
and avoids its consequences, by show-
ing circumstances which establish a
defense. This ~~plea~~ ^{defense}, like every other
plea which confesses and avoids, must
be proved. But in analogy with the
practice, under special pleas generally,

the proof must devolve upon the par-
 - ty interposing the defence. In this
 - defence the accused admits the murder,
 - ceide, but alleges, that he was inca-
 - pable of distinguishing right from
 wrong at the time, owing ^{to} mental
 derangement. Having averred the facts
 necessary to his defence, and being re-
 - quired to establish the truth of his
 plea, can it be said, that he has
 done so, when he has only averred
 - it doubtful, whether he was sane
 or insane? His plea, like all other
 affirmative facts, is capable of satis-
 - factory proof. It can not be that
 a person is so far insane as not
 to know right from wrong and
 yet those with whom he associates
 be ignorant of the fact. Such cases
 can not occur, among people of ordi-
 - nary intelligence and observation.

In the case of Regina vs. O'Farrell,
 9 C + P 525, Lord Chief Justice Denman,
 announced the rule, that all persons
 must be taken, prima facie, to be
 of sound mind until the contrary is
 shown. He says "the question is, what
 - is the prisoner was laboring under the
 species of insanity that satisfies" the

jury "that he was quite unawared of the nature and consequences of the act he was committing, or in other words, whether he was under the influence of a disordered mind, and was really unconscious, at the time he was committing the act, that it was a crime." It is here distinctly affirmed that the jury must be satisfied, and not merely left in doubt, of the truth of the plea. He says nothing about any species of doubt as to its truth.

In Great Britain, as late as in June 1843, a series of questions ~~was~~ ^{was} prepared to the fifteen judges, on the subject of the defence of insanity, to which they returned answers. In answer to the second question they say the jury must ought, in all cases, to be informed, that every man should be considered of sane mind until ~~until~~ the contrary is clearly proved in evidence. That before a plea of insanity should be allowed, undoubted evidence should be adduced, that the accused was of disordered mind and that, at the time he committed the act he was not conscious of right and

Manq." Mart. Cim. Law. 46. This an-
 swer of all the judges of England clear-
 ly established the rule of law in the
 courts of that country, to be that
 the accused must prove this defence of
 insanity, by undoubted evidence of
 its truth. It is believed, that no well
 considered case can be found, deci-
 ded in ~~the~~ ^{any} British courts an-
 nouncing a different rule.

In the case of Fisher vs. The People,
 23 Ill. 283, this court announced the rule,
 that "Before such a plea can be allow-
 ed to prevail, satisfactory evidence sh-
 ould be offered, that the accused, in the
 language of the criminal code, was
 "affected with insanity", and and at the
 time he committed the act, was in-
 capable of appreciating its criminality". The
 rule here announced is a modification
 of the rule of the British courts, and
 accords with the current of decisions
 in this country. Whilst this is not
 the uniform rule of the American
 courts, yet it has been announced by
 a large majority. This rule seems to
 accord with reason and justice, and
 is well calculated to protect communi-
 ty against the perpetration of crime,

insure the accord of a fair trial, and is in accordance with the analogies of the law.

Experience teaches us, that insanity is readily simulated, to the extent of creating a doubt, ~~which~~ in the minds of those who have no opportunity, by associating with the accused, ^{of} detecting the fraud. If the rule announced by the majority of the court, becomes the established law, I have grave apprehensions that it will be found a ready means of screening the guilty from merited punishment, and will operate injuriously upon society. It appears to me that the well being of society, the prevention of crime, and justice to the people, all require that the rule stated in Fisher's case should be no further relaxed.

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Hopps

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The People.

Julien April 27 1864

J. Selman M

Number 13.12 P 236

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgments of a plea which was in the Circuit
Court of Cook County, before the Judge thereof, between
The People of the State of Illinois

Complainant, and William Hopps

defendant....., it is said manifest error hath intervened, to the injury of the
aforesaid defendant

..... as we are informed by his
complaint..... and we being willing

that error should be corrected, if any there be, in due form and manner,
and that justice be done to the parties aforesaid, command you that if
judgments thereof be given, you distinctly and openly, without delay, send
to our Justices of the Supreme Court the record and proceedings of the
plaint aforesaid, with all things touching the same, under your seal, so that
we may have the same before our Justices aforesaid at Ottawa, in the County
of La Salle, on the first Tuesday after the third Monday in April next,
that the record and proceedings, being inspected, we may cause to be done
therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of
our said Court, and the Seal thereof, at Ottawa, this
14th day of March
in the Year of Our Lord One Thousand Eight Hun-
dred and Sixty three

L. Leland
Clerk of the Supreme Court.
J. D. Rice Deputy

7 to

The People of the

State of Illinois

No. vs.

William Hopps

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Leland

Clerk.

J. B. Rice Deputy

FILED March 14th A. D. 1863

L. Leland

Clerk.



Hoppe
vs.
The People

The judgment of the
court below is reversed and the cause
remanded for ^{in this case} a new trial
Sept 30th 1863.

J. J. Catton
Henry Reese

7 Hoppo
&
People

Rec'd & Rem'd

Filed Oct. 1. 1863.
H. H. H.
H. H. H.