(case just) would not expect to find in face indications of hanging. the absence of it would not form any evidence against it. Cholorofform has a good deal some effect of narcotics, producing a sort of passive congestion. this would or might be distinguished from the more violent congestion, cases of death from irritant poisons, I dont know why it should effect the brain at all. Narcotics & Irritants are all the poisons & their combinations

Cross

314 Heard some of Johnsons evidence as to different sorts of Strangulation. Cholorofform would to a certain extent produce congestion of brain. I think so from reasons by analogy. Mere fact of congestion of brain would not necessarily indicate congestion of brain, the the extent of it might. Even after a month I could form opinion (Case but) it would be very uncertain.

Direct resumed

Case of Mineral poisons. I should suppose they could be detected in other parts of body Dont know exactly mode of those two sorts of morphine. Arsenic has few affinities, that is a reason why it can be readily detected in body that is so with Mineral poisons generally. Not true of any of the vegetable poisons

Dr Johnson recalled

Mineral poisons can be detected in tissues of body any length of time. Of organic poisons I can't state so well. Mineral poisons dont decompose so readily. The Alkaloids are in common use as medicine & perhaps as poisons Prussic acid is at the drug shops usually in a diluted form dont generally get the pure acid there, a man of this diluted acid may die in several hours or days, a speedy quiet death cant generally be looked for from this diluted acid. The undiluted concentrated acid I have never seen. Prussic acid has odor of peach leaves. Easily perceived & detected. It is difficult to detect it, after much time unless it has combined with some ~~salt~~ substance forming a salt

305

Cross

To my own knowledge I never knew of detection of poisons in system when stomach & bowels were gone. It is so reported in books, arsenic mercury & copper most likely to be so detected. There are some poisons that might not be detected but if it went into blood it might be detected. Chances of poisons being found are diminished just in proportion as organs are removed

Dr Paddock

Physician & Surgeon. 15 years not connected with any Institution here. have been in Ohio & Mass. Prof of Anatomy. Dont know as I ever examined remains of persons dying by strangulation or narcotic poisons

If I found blood vessels of face (Case put) that state of brain would look toward death by strangulation rather than poison (Case that of head cut off & body sent to N.Y.) I should not expect to find any evidence in the face of strangulation, nor would the absence of it be evidence that it did not occur by strangulation. The fulness of vessels of face is not evidence of strangulation always. This appearance subsides after death I have administered Cholorform it diminishes sensibility. It acts on the brain as a nervous centre after a little the pulse grows lef & lef, a month after death from this I should not expect to find congestion of brain, Only temporary congestion of lungs would remain after death or long after it necessarily, Asphyxia

316

Croft

Cholorform would produce congestion but not permanent in its form, Cholorform produces death by destroying sensibility &

then all motion, the several modes of death from Strangulation are somewhat different Immediately after Surgery the surface vessels of face would be congested & lungs and the brain also, (Case put the case of Sophie) I would expect in this case as. symptoms I have mentioned except perhaps this congestion of brain in small vessels on surface. I dont know of any congestion of brain the result of decomposition at least of blood, it might be gas. (Case of Sophie put) I would not be willing to say what caused death, I would give opinion of Chronic inflamation of brain, hanging I dont know of any poisons that would congest the brain in that permanent way Dont know as arsenic produces any. The narcotic poisons that already alluded to. Blood vessels usually empty themselves after death & congestion disappears

317

Dr Clapp

Live in Chicago. Physician & Surgeon 15 yrs Have never examined brain of person who died of strangulation, Have of one dying of narcotic poisons (Case put) Congestion of surface of brain & blood in ventricles of brain Smooth after death. Strangulation would be more indicated than poison I should

not regard the absence of congestion of lungs as in any way constituting this theory. (Case put of Sophie) would not expect to find in such case any appearance of Strangulation, nor the absence of such appearance anything against such a supposition. Blood would run out — so I would not expect to find heart-congested

Dr Andrews

Live in Chicago Physician & Surgeon 6 or 7 years, never examined brain of human being dying of narcotic poison, have of Animals. Nor of strangulation by a chord or anything like it. (Question put as above) Strangulation would be the more probable cause. (Question put as 2d above) could not confidently expect to find or see any evidence of Strangulation nor would absence of it be evidence that it did not so die. Effect of Chloroform is first to excite and then to weaken. would not expect any congestion to be visible four weeks after death from Chloroform.

318

Cross

(Case put of body as before) I should not be willing to pronounce a confident opinion as to cause of death. A moderate congestion may be produced by anything which prevents

the respiration, or by making a mechanical obstruction to the vessels that carry blood to the veins. There are other means of strangulation than by the neck, that is that suffocation is I only speak in case of interior congestion as to probability between death from poison & hanging. Process of decomposition dont give rise to arterial congestion. The appearance is like it only to the eye, one colors the tissues & the other distends them

Dr Rogers

Live in Chicago Physician & Surgeon for 8 years. Never examined brain of person dying from Strangulation. Have from Narcotic poisons (Question put first as above) Most favor strangulation, Absence of congestion of lungs would not disfavor that theory

319

(2 question put) Would not nor absence of these appearances any evidence of no death by strangulation, Chloroform (death by) would not be likely to show much after death such congestion. Nor slugs flying and then killed by a blow, would show such a congestion Wounds in abdomen would cause death by hemorrage or inflamation this would not show so long after death congestion. Nor

would death by virulent poison. Mineral poisons can be detected by a chemist in any of tissues of body. They don't decompose in body so that analysis would not detect them

Cross

Case of instant death from Strychnine and bowels and bowels & stomach at once removed might detect poison in body. Case I spoke of I made a post mortem. Did not find the poison & was proved he took it. We did not go into a chemical analysis. Not much circulation in cartilage

320 (Case of Sophie Hart) The congestion of slight might be caused by a cold or suffocation or divers causes. It might be congested without hanging by the neck. Chloroform acts as a powerful sedative. It might produce Congestion in brain by cessation of heart's action. There is a general relaxation of all muscular tissues and for this reason congestion will not remain

Direct resumed

Death from Asphyxia would not produce so much congestion as actual stopping of circulation.

Before the arguments of Counsel commenced the Court gave to the jury the following instructions in relation to certain

[12825-149]

evidence which had been given during the trial

1st Nelnies Sworn
2d Eliza Raabe
3d Maria Valentheimer
4th August Bergberg 5th Catharine Bergberg
6th Anna Debus

To guard against misapprehension on the part of the jury as to the force and effect to be given to certain conversations in evidence, the Court deems it proper at this stage of the case to say again to the jury; That the conversations related by those witnesses as having taken place with the deceased Sophie Werner previous to her departure from Milwaukee to Chicago, — and her statements therein as to what the prisoner had written to her &c. are evidence only for the purpose of aiding the jury in forming an opinion as to the state and condition of the mind of the deceased at the time and previous to her departure, and the jury are explicitly instructed, that those statements are not to be considered as evidence for any other purpose whatsoever, and for any other purpose than that of showing the State of her mind they are to be treated by the jury as if they had not been proven in the cause

3211

Given

And the foregoing was all the evidence in the cause, and the same being fully argued by Counsel on both sides. The Court gave the following instructions to the jury before retiring upon the motion of the attorney for the People prosecuting this cause, to wit:

A A reasonable doubt is not such a doubt as requires the ingenuity of a man's mind to invent, or an effort or search to find. It is not such as may be made to appear by imagining the possible existance of facts not proved. But a reasonable doubt is only such as arises upon consideration of all the facts which are actually in proof, and because of which the mind acting reasonably, is still unsatisfied of the guilt of the party charged with the offence.

322

Morris

B A reasonable doubt, ~~is not~~ x is not a mere possible doubt; because every thing relating to human affairs and depending on moral evidence is, open to some possible or imaginary doubt — It is that state of the case, which after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Morris

S12225478

C Proff beyond a reasonable doubt is such evidence as establishes the truth of a fact to a reasonable and moral certainty; a certainty that convicts and directs the understanding and satisfies the reason and Judgment, of those who are bound to act conscientiously upon it.

Given

It is a Maxim of the law, that the suppression or destruction of Testiment evidence is always deemed a prejudicial circumstance of great weight. Therefore if the jury believe from the evidence, that the defendant attempted to prevent a post mortem examination by concealing a portion of the remains of the deceased, or that the prisoner concealed the death by an attempted destruction of the remains of the deceased, these are material facts for their consideration in determining the guilt or innocence of the defendant

Given

323

If the Jury believe from the evidence that the defendant concealed a portion of the remains, from which the presence or absence of poison in the body of the deceased could most readily and with the greatest certainty be ascertained this also is a material fact for their consideration in determining the guilt or innocence of the defendant

Given

D If the circumstances taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion, and producing in effect a reasonable and moral certainty that a murder had been committed as charged in the indictment and that the accused and no one else committed the offence, charged in the indictment, they will find the prisoner guilty

Given

E It is the duty of the jury to treat and consider any confessions proven to have been made by the defendant precisely as any other testimony: and hence if the jury believe the whole confession to be true, they will act upon the whole as truth,

3 2 4

But the jury may believe that which charges the prisoner and reject that which is in his favor, if they see sufficient grounds in the evidence, or, in any inherent improbability in the statement itself. The jury are at liberty to judge of it like other evidence, by all the circumstances of the case.

Given

To the giving of each and all of which instructions the Defendant then and there at the time excepted. And thereupon the jury retired to consider of their verdict and after some time returned into Court with the following Verdict, to wit: "We the jury find

[illegible]

the defendant guilty" And thereupon the defendant moved for a new trial of the said cause and filed the following written motion to that effect in the words and figures following, to wit:

Cook County Cir Ct Feb 3 1857

The People &c
vs
Henry Jumpertz } Indictment for Murder & Verdict of Guilty

The defendant Henry Jumpertz moves the said Court to set aside the verdict of the Jury in the foregoing & above named cause and to award a new trial thereon for the following among other reasons

1st Because the defendant when arraigned and was asked to plead, moved the Court to quash the said indictment against him, & filed his written motion to that effect, which motion was never acted on by the Court & overruled

325

2d That the said prisoner never plead to said indictment nor was called upon to do so otherwise than by said motion to quash &c.

3d Because of the absence of the witness Sam Fisher, as shown by the affidavits filed with this motion

4th Because of the absence of the witness

Theobald at the trial under the circumstances shewn in the affidavits filed in this cause

5th

Because the Jury were not kept together as the law directs but were permitted by the Court & also by the Officer in charge of them to seperate

6th

Because the Jury did seperate and because they so seperated without having an officer with them, and because one or more of the ~~jurymen~~ jurymen were permitted to and did seperate from their fellows & while so seperated were not with or under the charge of an Officer & because while thus seperated as last aforesaid they conversed with persons not of the Jury and about this case

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7th

Because the verdict of the Jury is contrary to the evidence & not warranted thereby

8th

Because the Court permitted illegal evidence to go to the jury, refused to permit legal evidence offered by the prisoner to go ___ the jury

The evidence which was permitted by the Court to be given to the jury & which the Deft alleges to be illegal & inadmissable is as follows.

[12825-152]

1st Evidence of the Statements & declarations of Sophie Werner the deceased made by her to different witnesses between the time when the Prisoner left Milwaukee in Dec 1857 & the time when said Sophie Werner left Milwaukee for Chicago on or about the 3d day of March 1858, and in one case a statement of the 3d deceased before she went to Milwaukee

2d Evidence of Statements & declarations of 2d Sophie Werner of the contents of letter which it was only proved she paid she had rec during the same period from said Ogft

3d That the Court permitted & directed certain experiments to be made with a door & various hooks & screws & weights by the Jury and other persons in the presence of the jury

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4th That another door with various hooks & screws driven into it & burnt or broken down on which other experiments were stated by the Atty for the People to have been made was exhibited to the jury both before & after the Court was opened & consequently both in & out of Court & inspected & examined by several of the Jury

5th The Court allowed and permitted a certain

receipt proved to have been signed & given
by the Dft Sophie Jumpertz to
for the sum of
proved to have been given by her for a portion
of the rent of certain premises which she
occupied in Milwaukee & which was paid
back to her at the date of said receipt by said
to be given in evidence
to the Jury, the receipt above described was
in fact offered and given in evidence for
the sole purpose of enabling the Jury to
judge by comparison of hands of the
genuineness of a certain letter introduced
328 by the People in evidence purporting to be
written by the Dft Accused to the Dft which
the Peoples Atty alleges & attempted to prove to
be a forgery

9

That the Court permitted a mass of evidence
consisting of statements of the deceased Sophie Marie
Scarley purporting to give the contents of letters
said by her to have been written by Jumpertz &
Scarley giving her reasons for coming to Chicago
& for selling her goods & dresses and as to her
future intentions, and tending to show that
Jumpertz (the Dft) had persuaded her to sell
all her goods & dresses & come secretly to him
& then after the same - been considered &
weighed by the Jury and at the end of the

5 12 26 194

trial instructed them that the said Ev was only to be considered in determining the state of mind of deceased

10 Because the Court misdirected the Jury

11 Because the Court refused to grant a continuance of the cause to the defendant, improperly

12

Because the Court decided to force the defendant into the trial upon the positive assurance of the Attorney for the People that all the witnesses from Milwaukee mentioned in the affidavits filed on the Motion for a continuance would be brought on the stand as witnesses by the prosecution and that unless they were so brought, that all the facts that were alleged by the prisoner or his Counsel in their said affidavits could be proved by said absent witnesses should be taken as an uncontradictable fact on the trial. That upon this condition the Motion for a continuance was overruled & that upon the trial the prosecution failed to produce the said witnesses and that the Court notwithstanding permitted evidence touching & about the matters stated in said affidavits as proposed to be proved by the absent witness, to wit: Mrs Davis and also instructed the Jury that they might consider the said evidence touching said

329

matters to be proved by said Mrs Adams which the prosecution brought to disprove the same

13

The Officers in charge of the Jury during the trial were not sworn

14

Because States Attorney was allowed to argue Defendants guilt in concluding argument from his countenance & demeanor on trial & also that he believed in his God which was not in evidence

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McComas & Van Armond

for Deft

And thereupon the Court took time to consider the said Motion for a new trial, and gave time until the hearing of said Motion to file evidence in support thereof

And the Court hereby certifies that the foregoing evidence as therein set forth was all the evidence in the cause, and said defendant prays that his aforesaid exceptions may each and every of them be received to him, and signed sealed and made part of the records which is done accordingly

George Manierre (Seal)

Judge of 7th Judicial Circuit

Illinois

(12825-15)

331

State of Illinois, }
COUNTY OF COOK. } s. s.

I, **WILLIAM L. CHURCH,** Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the Papers & Record & proceedings as the same now appear in my office in a certain cause lately pending in said Court on the side thereof, wherein The People of the State of Illinois were Plaintiffs and Henry Dumpert was defendent, on an Indictment for Murder

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Nineteenth day of April A. D. 1859

Wm L Church
Clerk.

Exhibit A. Being a copy of the Confession of Henry Jumpertz, Defendant. As taken down by Witness John C. Miller at the time of Defendant's arrest & referred to by witness in his testimony on the trial

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[12885-156]

My name is Henry Jumpertz my room is No 30 Pomeroys building. had the room little over ten weeks. almost three months paid $6.00 a month rent I boarded before that with Cone who has gone to Cincinatti. he was a Jew was teaching He left about two months ago he lived on maddison street at the head of La Salle street. I boarded there six weeks I worked at Srivolis about sixteen months was in Milwaukie worked for Gates in the newhol House I want to know if you have got my charge against me I like to have it I get proof. I worked in New York three years ago in Spring street worked there about a year never was in Leonard street never worked there worked here before I worked in Milwaukie worked here about four months commenced work here weeks before christmas I am twenty four years old born in Germany. Prussia A young man by the name of worked with me he is a barber his shop is on North side 31 N Clark he rooms with me now. did not room with me till I come from Milwaukie

I knew him before I went to Milwaukee
Jumpertz asked for water - Drank glass full.

I am not much acquainted in Milwaukee - not much acquainted any where. Was not much acquainted with woman then. Knew a few here - never go out much nights.
I have one particular female friend I think you know who she is. - Why did you take me up? I guess you know. At present I do not know where she is, not at present. Last saw her at my room - Her name was Sophia Werner - sister in law of that young man that roomed with me.
334 Her husband kept shop in Young America hotel. He left two years ago - The man went to Europe - came back - took a house keeper she (his wife) came on couldnt live with him.
I dont know exactly where she went when she left me - think she went to New York - She took every thing away - she left nothing - Are you the Judge? I guess I got to answer him - would like to see him - want to answer him.
My name is Bradley - that is Mr. Miller. City Atty that City Marshal -

[12025-127]

You are not bound to say anything
I can't tell when she left
(Equivocated)
She left a little over two months ago -
Had no quarrel with her.
Got acquainted with - got pity for her
Heard how she was abused - she washed for
a young man I knew. My boss knew her.
She took her home - I got acquainted with her
there. I slept with her. She came home. His
name was Wickhner, kept barber shop opposite
the Court House. She came home drunk &
make a fuss. They (Mrs Werner and Wickhners
wife) came down (to my room) without (their
clothes on) It was cold night. She laid down
in my bed. I went in bed with her. I after
slept with her several times. Rented a
room in Pitkins Building & roomed with
her. roomed there so have the building burned
I boarded on Lake Street. She propose to
me to board with her. She slept with one
She got in the family way. The low Dutch did
n't like me. I got her to go to Milwaukie.
She talked of marrying me. I could n't. She
had no divorce. I told her I would not.

336

She went to Milwaukee - I went up - Staid there 2 months - I said it was my sister, I boarded with her until it was over - about October - I told her about leaving Milwaukee She was sorry - about last September I came down to Chicago, to see Draffa - He said Yes you are the 1st one I will take when I get a chance - Fourteen days before Christmas I left for down here - She said it be last time I see her - She said what I did not know before that she expected to marry me - told her I could not;

338 The baby was dead (when it was born) I did not get a certificate (of cause of death) I heard from her since she left - She got plenty (of) washing - I wrote her to stay - I bought wood - flour - paid out in advance till next July so that she stay - I told her very plain I did not want her to follow me - She love me very much - she was good to me.

I was there 2 months before I wrote my last letter - She like to be dead - I told her to come on evening train - so that nobody know she be with me in my room

She wrote she received my letter

[illegible]

She (was) was going to die – did not want to die alone –
She came Wednesday night, came to my room – till Sunday noon – She said she want to go away – want to go where nobody know her – I say what you want to do. – (she said) she must go –
(I) got a stove flour & things – she cooked – Sunday noon I came home – door (opened) hard – She hung by rope on door – I took her down – put her on bed – couldnt move for 3/4 of an hour – couldnt move – (was) half dead – She leave paper on table to me – she could not live, my last wish could
340 not – die with Werner – She forgive me – I sat by window – Thought I get coroner – nobody know me – It would get in German paper – Laid her on floor on a mattrass – I thought to cut her to pieces – couldnt throw her into river (there was) so much ice, I took knife and cut her belly – came blood – dinner was (on) at table – I took a lancet let her bleed – no blood come from arm but one drop – she bleed no more saw she was dead – I cut her up – Put her on a mattrass – Burnt (her) clothes – carried liver and buried them out 2 miles in sand ground It was a good

{

{12825-160}

the Draymans. What was in the papers was all right. She was not sick before, there was no chloride of lime in the barrel. Think that Doctor that make the examination a great fellow not to know chloride of lime from flour. When I cut her up it was nasty - by God it was.

I thought I would not go to the Court House. She hung to (by) a great collar rope, hardly a foot from the ground - on a plain strong screw - she put in the door herself - some of the pulley is left - the screw was in the head of the door - she put it in herself. I slept with her the night before. She said "Good by Henry," when I left for the shop. She did not kiss me. The window was open. I lay in it to read it (the note from S W) the wind blew it away. I got one letter from Milwaukie that she want to die. She tried to poison herself when she was at Warners. She put something in water, a young man saw her.

What became of the note?

353

I never told anybody of this before. I expected you to come for me before. I read everything in the papers. Nobody came to my room while she was there. I got her trunk from the depot. a Drayman brought it, no one else

(ABSENT)

came there, I moved the trunk away
It had Woman's apparel in it, to a
real person by express. I took out letters
they could not identify. Burned the letters
I have told everything about it. They
(to whom trunk was sent) are respectable people
sent it 2 days before I sent the body.
Refuzed to state who they were or where
they ~~lived~~, It was half past one Sunday
noon when I came to the Room, Dinner
was all cooked, soup and all.
Her name was Sophie Peters. She was 29
the 13 Dec 1857. She had several Children
all are dead the eldest was 11 mos when
he died. The child born in Milwaukie
was born dead in August, Paid the
Sexton in advance, never got a certificate
It was my child. —
I am 24 7th last april, lived here 4 years
14 May 1858. am from Prussia

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[1925-162]

State of Illinois
Cook County, }

I George Manierre Judge of 7th Judicial Circuit in said State do hereby Certify, that the foregoing record contains a full and true history of all the proceedings on the trial of Henry Knipsetz on an indictment for the Murder of Sophie Werner tried at the January Special term of the Circuit Court in for said County in the Year One thousand Eight hundred and fifty nine, and I believe that the same is entitled to the fullest credit.

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Given under my hand at Chicago, this 18th day of April A.D. 1859.

George Manierre
Judge of 7th Judicial Circuit, Ills.

Second

The Experiments made in Court by & in presence of the Jury –

The Prisoner having stated in his Confession made immediately on his arrest that the deceased had hanged herself on a screw driven into the head style of the door of his Prisoner's room. the Prosr to negative and disprove the suicide in the manner so stated & thus impeach and falsify the confession of the Prisoner in this respect. proposed to make & exhibit in the presence of the jury in open Court. certain experiments tending (as they alleged) to show that a screw driven into the head style of the said door would not support a weight equal to that of the deceased.

To such proposed experiments the Deft objected and the objection being overruled took his exception –

The weight of the deceased having been proved at 140 to 148 lbs & the door of the Prisoner's room having been produced & identified & a quantity of screws found in

[1280-5-163]

the Prisoner's room being produced the experiments were under the order of the Court made by & in the presence of the Jury (for a description of which Experiments see abstract Page)

The experiments consisted in suspending one of the Jurymen by a rope round his body to different screws (some of them found in Prisoner's room & some of them obtained elsewhere) driven into the head Style of the said door.

The experiments resulted variously some of the screws broke some bent down some were pulled out & some remained firm

Now the fact sought to be established by these experiments to wit "that the screw described by the Prisoner on which he alleged that deceased had hanged herself would not support her weight was material and admissible"

If established it would clearly falsify his confession

The question is, was the mode of proof resorted to admissible?

13

Henry Jumpertz

vs

The People of the State of Illinois

Transcript

Filed April 20 1859

Filed April 20, 1859
L. Leland
Clerk.

First were any experiments admissible;

Second were the particular experiments made admissible;

All facts truth and principles which jurors may lawfully resort to & employ in the determination of questions submitted to them may be divided with reference to the means by which they gain a knowledge of them into the three following classes

First

Such general truths & principles as are commonly known & recognized by men of ordinary knowledge observation & experience, such as the ordinary & well known laws & properties of matter the known & established order & relations of things in the physical world & the usual motives of action & marks of conduct of individuals & communities

These Elementary truths gathered from common observation & general experience comprise a vast body of facts and principles sufficient with the aid of reason to guide the conduct & direct the judgment of men in all the ordinary concerns & duties of life

S12825-11

Second

Such Truths & principles as appertain to particular employments arts trades & sciences which are commonly known only to persons who pursue or are conversant with such employments arts or sciences.

Third

Such particular facts incidents or events as can be known only to such individuals as by their situation relative to such facts or events were by such situation enabled to gain a knowledge of them.

~~How this class~~

~~are~~ This classification is exhaustive of the whole subject - The three classes comprehend all possible truths which are either known or capable of being made known to a jury

It remains to enquire how a jury may lawfully acquire a knowledge of ~~what~~ each of these three classes of truths

As to the first the definition above given clearly indicates the source & means of knowledge

Such truths and principles as are usually learned by men of ordinary observation & experience in the common affairs of life are in law as well as reason presumed to constitute a part of the common knowledge & education of men.

Such truths the jury are presumed to have knowledge of. & therefore of such truths no proof is required & none is admissible The jury not only may but must use that common knowledge & experience which they are presumed to possess & the possession of which is supposed to constitute their peculiar fitness for the duties which the law imposes on them.

In all questions involving only this common knowledge & experience the parties have a right to the full benefit of the judgment and knowledge of the Jury whom they have selected. and of such advantage they cannot be legally deprived by the substitution of the judgment or knowledge of others who in law are deemed to be no better qualified than the Jury.

[illegible]

This is the well settled doctrine of the elementary writers on evidence from Chief Baron Gilbert down to Greenleaf & is supported by the cases cited in the printed brief.

~~To reverse this~~ deny this doctrine & you deny the presumption of ordinary intelligence of the jury admit evidence upon questions of mere ordinary experience & observation and you may as well have a jury of idiots for if evidence is to be admitted it must be to control their judgments — admit opinions & experiments on this class of questions and instead of the safe guide of long experience & repeated observation of ~~men~~ ~~men of different pursuits~~ a considerable number of men of various pursuits & habits of life & modes of reasoning you substitute either the naked opinions of Partisan ~~interested~~ or prejudiced witnesses or the ~~deceptive~~ ~~facts~~ & delusive experiments & deceptive tricks of ~~interested~~ practical mountebanks

The well known laws of nature would be open to litigation & ~~well~~ all ~~known~~ moral ~~truths~~ and Physical truths made to depend upon the accidental preponderance of the

testimony offd in favor of or against them —

If the fact sought to be established by these experiments belongs to the first class of truths above enumerated as contended by the Respts atty then no evidence is admissible either by experiment or otherwise

The second & third class of facts & principles above enumerated can only be known to the Jury by means of proof, as they are conclusively presumed to be already acquainted with all truths of mere ordinary experience so they are conclusively presumed to be ignorant of all other facts & truths relating to the question and as they are obliged to be guided solely by their own experience & judgment in the former case so they are obliged to be controlled exclusively by the evidence in the latter case —

The second class of truths above mentioned to wit such as belong to some

[12935-166]

particular art trade or science
are generally denominated scientific
truths and are ordinarily established
by the opinions of men conversant with
the trade art or science to which the
subject belongs.
Now it may be supposed against
the opinion of the People's attorney
that the question upon which these
experiments were introduced was
of this class.
If so it could have been determin
=ed by the opinion of experts. but
were experiments admissible? —
If ex
=periments are admissible in any ~~of~~ kind of scientific ~~questions experiments~~
then they are admissible in all
If admissible to prove the properties
of iron then they are equally so
to prove the properties ~~of~~ not only
of all other metals but of all other
substances. — The character of
the question & the degree of scientific
skill required in its solution could
make no difference in the principle
To say that the simpler questions
in the arts & sciences might be made

the subject of experiment before the jury ~~while~~ and the deeper & more complicated determined by other evidence would encumber the rules of evidence with subtle and impracticable as well as entirely moral distinctions.

The broad question must be met whether experiments performed by & in the presence of the jury are admissible either as a substitute for or auxiliary to the opinions ~~evidence~~ of experts. the knowledge

Now that most of scientific truth is the result of experiments is doubtless true but it is equally true that no sound reasoner ever ventures to affirm or assume a general matter or conclusion as established by a single experiment seldom by a simple series of experiments accidental causes so vary the results that it is only by numerous & repeated experiments that truth can be ~~safely~~ obtained

Besides skill is required in conducting such experiments. Now is it possible in the course and under the circumstances of a trial in a court of justice

12 DS-163

to secure the conditions required to render such experiments useful.

The Jury are to be educated by a system of inductive experiments up to the knowledge of whatever scientific truths may be involved in the issue

Who shall direct these experiments The jury are presumed to be ignorant but is the Judge presumed to be kept so. — Who shall select & test the materials, who supply the laboratories

If left to the parties or their attys will there be no danger of deception no risk of tricks of legerdemain?

How shall it be known when the ~~proper degree~~ Jury have attained the proper degree of knowledge or shall the number & variety of the experiments depend on the will of the parties

The difficulties of this inductive system of investigation in courts of justice & the absurdity & error to which its adoption would lead manifestly as the subject is considered & it seems to require only the illustration furnished by

the present case to expose its fallacy & censure its condemnation —

Here without evidence of the size material or construction of the screw alleged to have been used by the defts. whether of wood iron steel or brass. — The Court allows experiments with other screws without any actual knowledge of the material of those latter screws (and no eye could detect the difference between hard soft & chilled iron or steel) to be made with an unknown weight (for there was no evidence of the weight of the screw suspended — And the result sufficiently indicates the unreliability of this kind of evidence.

It will be seen that in a large majority of the experiments made by the Defts friends the screw held the weight which in a large majority of those made by the Pltfs. under apparently the same conditions it failed to hold. — Now whether any of these two of screws were of the same metal was not proved & cannot be known

S 1200-164

nor whether any one of them was of the same metal or similar in any respect to the one alleged by the theft to have been used by the accused. Can any better illustration be afforded of the uncertainty & danger attending this species of evidence & its utter worthlessness as a guide to truth than the variant & conflicting results of these experiments all made under almost the same conditions - accidental causes not appreciable to the eye nor capable of description were sufficient in this case to change the result. Is this the kind & quality of evidence upon which the property liberty & life may depend?

But where is the authority for this evidence - none has been or can be produced - no Elementary writer no judicial opinion sanctions or recognizes it. it is a stranger in courts of Justice imported thence from the work shops of trade & the laboratories of science

An agent of incalculable value to the Philosopher who has learned

to application a sure guide to truth in the hands of experience & skill - ~~the leads only to or~~ the hands of the ignorant & inexperienced it can lead only to error & absurdity.

But the particular experiments made were inadmissible

There was no established identity or similarity of conditions between the fact ~~sworn to by~~ testified by Dyer and the experiment enacted before the jury the keeping of the door only was the same - The rope screws & weight suspended were neither identical nor shown to be in any respect similar

(12825-116)

Humphreys did not state in his confession of what size material or construction the screw used by Dr Dodd was — It might be iron steel brass or any other metal or material — No proof was offered of the material of the screws used in the experiments, & none of the culprit of the man suspended

The Court certifies that he said he weighed 145 lbs. but he was not sworn & his statement is no evidence.

Now I have considered the admissibility of these experiments upon the supposition that the truth to be established by them was either one depending on common observation & experience or one which transcended such common experience and belonged to the particular experience of men of some trade art or science & have sought to show that experiments are not the legal & admissible evidence of either of these classes of truths

One other class alone remains to be considered to wit: Such particular facts or events as can be known only to the persons who from their relation to such events were able to witness them

Now that the fact or truth for the establishment of which these experiments were offd is not of this latter class is quite apparent

The truth sought to be proved was, that the general one such a screw as that discribed by Hoffe in his confession & so adjusted would not hold or bear the weight of the deceased

(12895-145)

now if any wit^{s} had seen the event described by the ~~deceased~~ left to wit; the alleged suspension of the dec^{d} on the particular screw. then the fact would have fallen in this latter class.

The experiments were offd to prove that a screw that is any screw of a supposed description adjusted in a given manner would not support a given weight this is not a fact or event of which a wit^{s} can swear ~~from having~~ but it is a conclusion or judgment deduced from other facts & evidently falls within one or the other of the first two classes

But it is quite immaterial to which of the three classes it belongs as the argument above advanced is equally applicable to all

3 The question in relation to admissibility of writings for mere comparison needs no argument as the rule is already settled in this State

State of Illinois
Supreme Court

The People
vs
Henry Steinhertz

Argument on
Exceptions
John Van Arman

STATE OF ILLINOIS—SUPREME COURT.

HENRY JUMPERTZ,

Plaintiff in Error,

vs.

THE PEOPLE,

Defendants in Error.

ABSTRACT OF THE RECORD OF COOK COUNTY CIRCUIT COURT.

United States of America,
State of Illinois, County of Cook, } ss.

Pleas before the Honorable George Manierre, Judge of the Seventh Judicial Circuit of the State of Illinois, and sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof, began and held at the Court House, in the City of Chicago, in said County, on the Third Monday (being the Twenty-first day) of February, in the Year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States, the eighty-third.

Present—Honorable George Manierre, Judge of 7th Judicial Circuit.

Wm. L. Church, Clerk. Carlos Haven, States Attorney.

John Grey, Sheriff.

Be it Remembered, That heretofore, to wit, at the June special term of said Court, to wit, on the 28th day of June, in the year last aforesaid, the following proceedings among others were had, and entered of record, to wit:

The Sheriff this day returned into Court the venire issued by order of the Board of Supervisors of Cook County, commanding him to summon twenty-three good and lawful men of his County, to serve as Grand Jurors for the said June special term of this Court, duly executed, &c.

And thereupon the said Jurors were duly sworn as a Grand Jury, for the County of
2 Cook. And the Jury aforesaid, after hearing the charge of the Court, retired to consider of their presentments. And afterwards, to wit, at the same term of the said Court last aforesaid, to wit: on the 30th day of June, in the Year last aforesaid, the following proceedings among others were had, and entered of record therein, to wit:

This day came into Court the Grand Jury, and make the following presentments, endorsed, "a true bill," to wit:

The People of the State,
vs.
Henry Jumpertz. } *Indictment for Murder.*

and the said Grand Jury having no further business before them, are discharged by the Court.

And afterwards, to wit: on the day and Year last aforesaid, there was filed in the Court aforesaid, a certain Indictment which is in the words and figures following. [Here follows the indictment, the caption of which is as follows:]

State of Illinois,

Cook County, ss: Of The June Special Term of the Circuit Court, of Cook County, in said State and County, in the Year of our Lord one thousand eight hundred and fifty-eight.

[12 825-167]

7 On the back of said indictment appears the following endorsement, to wit: The People, &c., vs. Henry Jumpertz; Indictment for Murder; a True Bill; Henry Danks, foreman.

8 And afterwards, to wit: At the same time of the said Court last aforesaid, on the second day of July, in the Year last aforesaid, the following proceedings were had:

THE PEOPLE OF THE STATE OF ILLINOIS,
vs.
HENRY JUMPERTZ. } *Indictment for Murder.*

The said Defendant being duly arraigned, &c., and having moved to quash the
9 indictment, and said motion being overruled by the Court: Thereupon the said Defendant, for a plea to the said indictment, says that he is not guilty in manner and form as he is charged therein, and of this he puts himself upon the Country, &c.; and the said People do the like, whereupon the said Defendant is remanded to the custody of the Jailor, and on motion of the State Attorney, said cause is continued.

And afterwards, to wit: on 10th day of September, in the year last aforesaid, the said Indictment, &c., was certified by the Clerk of said Court to the Cook County Court of Common Pleas.

Afterwards, on the 15th day of November, 1858, said Indictment, with a transcript of
10 the record of the Cook County Court of Common Pleas, in said cause, was refiled in said Circuit Court, which transcript is in the words and figures following:

At a regular term of said Cook County Court of Common Pleas, commenced on the
11 second Monday, (being the 13th of September,) in the year 1858, and on the 20th day of September, in said term, the following proceedings in said cause were had:

THE PEOPLE OF THE STATE OF ILLINOIS,
vs.
HENRY JUMPERTZ. } *Indictment for Murder.*

And now on this day came the said People by Carlos Haven, their Attorney, and on his motion, it is ordered that this cause be continued to next term.

17 That afterwards, the said cause stood for trial at the regular trial term of the said Circuit Court, in November, 1858. That at the trial term last aforesaid, the said Circuit Court continued the said cause, with all the other criminal business, until the January term, 1859 —a term specially called for criminal business.

That at the time of the said last continuance of the said cause, neither the prisoner nor his counsel were present, nor had at the time any knowledge of the order.

12 And afterwards, on the 6th day of January, 1859, the said Defendant filed in the said Court his motion, in writing, as follows, to wit:

13 THE PEOPLE OF THE STATE OF ILLINOIS,
vs.
HENRY JUMPERTZ. } *Indictment for Murder.*

The Defendant, Henry Jumpertz, moves the Court:

1st. To set him at liberty, and discharge him from further imprisonment under said prosecution, &c.

2nd. To set him at liberty, and discharge him from further prosecution on the Indictment against him for the murder of Sophia Werner.

And assigns the following reasons:

That he has been imprisoned on said charge since 26th of May, 1858.

That said cause was put at issue at the June term, 1858. That at the said June term of this Court, and at the regular September term of the Cook County Court of Common
14 Pleas, in same year, the said cause was continued on the motion of the Prosecuting Attorney, on behalf of the People; And that the same stood for trial at the November term of this Court, 1858, but was continued, and that all of such continuances were without the consent of the Defendant. That three terms of said Courts, at either and each of which said

Defendant might have been tried, had passed without his having been tried, and without his, said Defendant, having moved for or consented to any continuance, during all of which time he had been imprisoned without Bail.

And on the hearing of the said motion, the said Defendant, by his Attorney, and the
17 said Carlos Haven, in behalf of the People, filed their written stipulation, in the words and figures following, to wit: "That the Defendant, Henry Jumpertz, was arrested in May, 1858; That he was indicted, and pleaded thereto at the June term of the Cook County Circuit Court, 1858; That the cause was continued on motion of the People's Attorney, at the said term, in opposition to the request of the prisoner; That the cause was then transferred to the Cook County Court of Common Pleas, and was called for trial at the regular September term thereof, in 1858, and was then again continued, against the request of the said
17 Defendant, and on the motion of the said Attorney for the People, and then the cause was transferred back to the said Circuit Court, and stood for trial at the regular trial term thereof, in November, 1858.

That at the regular trial term last aforesaid, the said Circuit Court continued the said cause, with all the other criminal business, until the January term, 1859—a term specially called for the criminal business; That at the time of the said last continuance of the cause,
18 neither the prisoner nor his counsel were present, nor had at the time it was made, any knowledge of the order; but that they learned soon after, and during the term, that such continuance had taken place, and expressed to the Court no dissatisfaction with said order.

(Signed,) CARLOS HAVEN, *State Attorney.*
E. W. McCOMAS, *Counsel for Prisoner.*

18 And the said McComas and Haven then and there presented said stipulation to the Court, and agreed that said facts were true, and that they, together with the record in the case, should be in evidence before the Court on the hearing of said motion.

And thereupon the said Court overruled the said motion; to which opinion and decision of the Court overruling the said motion, the said Defendant, by his counsel, then and there excepted, &c.

19 And afterwards, to wit: On the 11th day of the month, and year last aforesaid, the said People filed in the said Court, a written motion, in the words and figures following, to wit:

PEOPLE, *vs.* JUMPERTZ. } *Indictment for Murder*—January 9, 1859. To HENRY JUMPERTZ, *Defendant;* McCOMAS & VANBUREN, *Defendant's Counsel.*

19 Gentlemen—Please to take notice: That the People will call, on the trial of the above cause, the following witnesses, whose names are not on the indictment, to wit: Minna Kacher, August Herzberg, Catherine Herzberg, Eliza Raabe, Frederick W. Raabe, Anna Dapus, Elizabeth Dapus, Minna Feitenhamer, Edward Vallert, and Nicolas Kessler, Milwaukee.

20 And afterwards, to wit: On the 24th day of the month and year aforesaid, at the January term of said Court, the following proceedings were had in said cause: The said Defendant comes and moves the Court, on affidavits filed, for a continuance of said cause, which affidavits are as follows:

PEOPLE OF THE STATE OF ILLINOIS, *vs.* HENRY JUMPERTZ. } *Indictment for Murder*—January Special Term.

Henry Jumpertz, being duly sworn, says: That he is Defendant in said cause; That he was imprisoned in May, 1858; That the indictment was found at the June term of said
24 year, at which term he in good faith urged for his trial.

That the said cause again stood for trial at the September term of the Cook County Court of Common Pleas, when Defendant again urged for a trial, but the cause was con-

tinued. That said cause again stood for trial at the November term of this Court, and was again continued without affiant's consent or knowledge. That owing to his imprisonment, affiant has had to rely solely on the assistance of his Counsel, and that he, and as he believes his Counsel, were ignorant that a special term was to be held in January, 1859, for the trial of said cause, or that said Court had a right to postpone the said trial to any time
25 during said term. That affiant has no means in his hands to procure witnesses; that all the property he has, has been taken from him by the officers, at his arrest, and has been only partially restored, and that within a few days past.

That just previous to the last visit of the deceased, Sophie Werner, to Chicago, affiant received a letter from her, which, he is advised, will greatly aid in his acquittal. That said letter was taken from affiant's possession, when he was first arrested, and has ever since been kept by the prosecution.

26 That affiant's counsel soon after his arrest, applied to the officer who had it, to permit him, said counsel, to see it; which was refused. That at length, on the 18th day of January last, for the first time, the said letter was by order of the Court, placed in possession of the Sheriff; and that immediately thereafter, affiant's counsel accompanied, by said Sheriff with said letter, proceeded to Milwaukee, where the deceased had lived, to search for witnesses who knew the hand-writing of the deceased by whom to prove said letter; and did not return until Friday last; and, that the said Sheriff did not return with the letter until
27 Saturday last; and, that immediately on his said Sheriff's return, affiant's counsel went forthwith to various persons in Chicago, who knew Sophie Werner, to find proof of her hand-writing. That on the eleventh day of January, 1859, defendant's counsel were served with a notice of a large number of additional witnesses, and with a notice of two others to-day, which the prosecution would examine on the trial, among whom were a number from Milwaukee.

That until this notice, it was not known that the prosecution would attempt to impeach or discredit the letter, or that said Milwaukee witnesses were to be used. That a subpœna has been issued for J. Weglehner and wife, and sent to Grundy County. That his counsel, as he is informed and believes, has been unable to see several persons in Chicago, whom he believes would testify to the hand-writing of Sophie Werner, for want of time to do so since the return of the Sheriff with said letter.

29 That, as affiant is informed by his counsel, he can prove by a Mrs. Davis that said Sophie Werner was of a most desponding temper, and expressed to her her conviction that she should not be long in this world. That said Mrs. Davis lives in Milwaukee, and expresses her readiness to come and testify on his trial, but has just been confined in child-bed and cannot leave her room. And, defendant believes that he can procure the attendance of said witness at the next term of said Court. That he is advised by his counsel, and
32 believes that the testimony of said witness is most material and necessary for him in his defense, and that he cannot safely go to trial without it.

That the prosecution, as he is advised and believes, have made elaborate preparation, while he has been compelled to remain in ignorance of the proof to be brought against him.

(Signed), HENRY JUMPERTZ.

THE PEOPLE, *vs.* HENRY JUMPERTZ. } *Indictment for Murder.*

E. W. McComas being sworn, &c., says: The moment the letter mentioned in the affidavit of defendant filed in this cause was given to the Sheriff of said County, under the order of the Court, he went with said Sheriff and said letter to Milwaukee, and in company with said Sheriff examined and conversed with several witnesses and persons in relation to the alleged crime of defendant, and among others, Mrs. Eliza Roabe, Minna Kacher and a Mrs. Davis. These were the names they gave.

That they all expressed a willingness to attend the trial, and agreed to do so positively if it were possible, but rendered the following excuse respectively:

Mrs. Davis had just been confined, and was unable as yet to come. The evidence of which was present and manifest to affiant as well as others. Said Mrs. Davis stated to affiant in substance that Sophie Werner was of a desponding temper, and spoke of not expecting to live long.

(Signed), E. W. McComas.

Thereupon, the Court, after continuing the said cause until the following day, upon the Attorney for the State informing the said Court that he had heard from the said witness and others mentioned in said affidavits, and should be able to, and would procure their attendance on the trial. The said Court overruled and denied the said motion; but remarked that if the Attorney for the People should not procure said witnesses, he would consider their absence and his failure to produce them on a motion for a new trial on the ground of surprise.

To which ruling and opinion of the Court overruling said motion the said defendant excepted.

And afterwards, on the 26th day of January, in the year last aforesaid, the said people by their Attorney and the said defendant in person and by his counsel being present and ready, it was ordered that a Jury come, &c., whereupon a Jury came, &c., and were duly elected, tried and sworn, &c., to try said cause. And the Court being about to adjourn till the following day, it is ordered that the Sheriff or some other officer of the Court take charge of the Jury and keep them together, &c.

Afterwards, on the 27th day of said January, the People by their Attorney, and the prisoner in person, and by his counsel being present, the testimony was commenced and continued from day to day, until the 2d day of February, when the evidence was closed, and the argument of the said cause was commenced, and continued until the 5th day of February, when the argument was closed.

On the 5th day of February the argument of counsel being closed, and the Jury, having heard the instructions of the Court, retired to consider of their verdict, and returned a verdict of *guilty*.

Whereupon the said Defendant, by his Counsel, moves the Court for a new trial and in arrest of Judgment.

Which motions are here entered of record, and the said cause continued to the next term of this Court for hearing, upon said motions.

And afterwards, to wit: on the 20th day of February, A. D. 1859, the said Defendant, by his said Counsel, filed in the Court aforesaid his motion for a new trial of said cause, in the words and figures following, to wit:

The People of the State of Illinois, *vs.* Henry Jumpertz.	Cook County Circuit Court, February Term, 1859. *Indictment for Murder.*

The Defendant, Henry Jumpertz, moves the said Court, to set aside the verdict of the Jury, in the said cause, and award a new trial therein, for the following, among other reasons:

1st. Because the Court never acted on or decided the motion to quash the indictment.

2. The Defendant never plead to the indictment nor was called on to do so.

3. On account of the absence of Mary Fisher, a witness, as shown in affidavit.

4. On account of the absence of the witness, Theobold, at the trial, as shown by affidavit.

5. Because the Jury were not kept together, but were permitted to separate.

6. Because one or more of the Jury did separate from their fellows, without being

in charge of an officer, and were conversed with by persons not of the Jury, and about the cause.

7. Because the verdict was against the evidence in the cause.

8. Because the Court permitted illegal evidence to go to the Jury, to wit: The statements and declarations of Sophie Werner, deceased, made to different persons, between the time the prisoner left Milwaukee—December, 1857—and the time when said Sophie Werner left Milwaukee, on or about 3rd of March following.

2. The statements of said Sophie Werner, of the contents of Jumpertz's letters to her.

51 3. The Court permitted and directed experiments to be made with door hooks, &c.

4. Also, that another door was exhibited to the Jury, with hooks in it, broken or bent down, both in and out of Court.

5. The Court permitted a receipt, purporting to be signed by Sophie Werner, to be given in evidence, for the sole purpose of enabling the Jury to judge of the hand-writing of said Sophie, by comparison.

52 9. The Court permitted a mass of evidence to go to the Jury, consisting of statements of Sophie Werner; and then, at the close of the trial, instructed them that it was only to be considered as evidence of her state of mind.

10. The Court misdirected the Jury.

11. The Court refused to grant motion for continuance.

12. Same in substance.

53 13. The officers who had charge of the Jury were not sworn.

14. Because the State Attorney was allowed to argue the guilt of the prisoner, from his countenance, demeanor, and because he did not believe in a God.

57 In support of which motion, the Defendant filed in said Court the following affidavits:

Henry Jumpertz, the said Defendant, being duly sworn, &c., says: Ever since the finding of the indictment in said cause, E. W. McComas has been his counsel, and that being closely confined to jail, he has been compelled to depend solely on his said Counsel to find and procure the attendance of his witnesses. That he is informed and believes that his 58 Counsel saw and conversed with one Theobold, in Milwaukee, who stated to said McComas that he would testify, just before Sophie Werner left Milwaukee she spoke to him in a most desponding tone, and said she would not be long in the world, &c. That said Theobold promised to come and attend said trial, if sent for.

That one Kennedy was sent for the Milwaukee witnesses, with money to pay their fees and expenses, and that in the hurry of his departure he did not procure a full list of said McComas, and the name of said Theobold was accidentally omitted, and he was not obtained.

And that said Kennedy did not return till the evening before the evidence in said cause was closed, when it was too late to obtain said witness.

59 That he is informed, and believes that one Mary Fisher stated to his said counsel before the trial that she would swear that she knew Sophie Werner, and was well acquainted with her; and, that on one Sunday morning in the month of March, between nine and ten o'clock, the said Sophie came to her, said Mary Fisher's house, in Chicago, and seemed 60 greatly depressed in spirits, and stated her troubles and sorrows, and spoke of putting an end to her existence, and said that she had bought a bottle of laudanum with which to destroy her life, and asked her, the said Mary, if she thought it was sufficient to kill her, and showed her the bottle; that something was said about the best mode of committing suicide, and a young woman who was present said the best way was by hanging, &c.

61 That a subpœna was issued and served on said Mary Fisher to attend said trial.

That during the trial, affiant's counsel learned that said Mary Fisher was about to leave the County of Cook, and thereupon moved for and obtained an attachment for her, and she was arrested and brought into Court, but before an opportunity arrived to examine her in said cause, she by some means got out of the custody of the said officer and left the city,

and could not be found when her testimony was wanted. And that she left without the knowledge or consent of affiant or his counsel; but that her place of residence has since been ascertained to be Cincinnati. But such information was not obtained in time to procure her affidavit on this motion. Affiant further states that he never consented to any separation of the Jury in said case.

John Van Arman being sworn, &c., says: That he and E. W. McComas were the only counsel of said defendant on his trial. That neither of them, to affiant's knowledge or belief, consented to any separation of the Jury, nor was any such separation directed or permitted
64 by the Court in his hearing. That no witness by the name of Mrs. Davis was sworn on the said trial; nor was any such witness in attendance to the knowledge or belief of affiant.
65 That on one morning during the trial of said cause, affiant came into Court room before the Court was opened and found the Jury in their seats, and that standing directly behind and in plain view, and but a few feet from them was a door, with divers hooks and screws, driven or screwed into it, some or all of which were broken or bent down, that
66 while the door was so placed, affiant saw some of the Jury turn around and examine the said door, &c. This occurred both before and after the opening of the Court. That after the opening of the Court affiant called the attention of the Court to said door, &c., and enquired for what purpose it was there; whereupon the Attorney for the People stated that experiments had been made on it with weights hung on the hooks, and it had been brought in and exhibited to prove the impossibility of the deceased having hanged herself as stated by Jumpertz in his confession. That said affiant then moved to exclude said door, &c., from the room, which was done.

That the Attorney for the People then proposed to bring into Court the door of the room occupied by Jumpertz at the time of the alleged murder, and two hooks and a quan-
67 tity of screws found in said room at the time of his arrest, and make and allow the Jury to make experiments on them by driving said hooks and screws into said door and hanging weights on them for the purpose of enabling the Jury to determine whether the deceased could have hanged herself in the manner stated by the defendant in his confession.

To this proposition the defendant by his counsel objected; which objection was overruled by the Court, and said experiments directed to be made; and that said experiments were then made as proposed with said door, screws, hooks and weights, in the presence of
68 the Jury, and that the counsel for the People were permitted to, and did argue from said experiments that it was impossible for the deceased to have hanged herself as alleged by the affiant in his confession.

E. W. McComas being sworn, &c., says: That he has been the Counsel for Defendant ever since the finding of the indictment. That he conversed with one Theobold, at Mil-
69 waukee, who promised to attend said trial as a witness, if sent for. That said Theobold stated to him in substance that he would testify on said trial that, just before the deceased, Sophie Werner, left Milwaukee to come to Chicago, she spoke in a most desponding tone, and told him she would not be long in this world. That money was provided to send for the witnesses at Milwaukee, and George Kennedy was sent after them. That owing to the pressing engagements of Counsel during the trial, said Kennedy was not furnished with a full list of the witnesses, and the name of said Theobold was accidentally omitted, and that affiant was not aware of the omission until return of said Kennedy, on the evening that the evidence in said case was closed. That some time previous to said trial, one Mary Fisher,
70 stated to affiant as follows: That she did not know the defendant; That she was acquainted with the deceased, Sophie Werner. That on Sunday morning, in the month of March, between 9 and 10 o'clock, the said Sophie came to her house in Chicago, and seemed to be greatly depressed in spirits, and stated her sorrows, and that she was desirous to put an end to her existence, and had bought a bottle of laudanum for that purpose, and asked her, the said Mary, if she thought it was sufficient, showing it to her. That something was then said

about the best mode of committing suicide, and some young woman present told her not to take laudanum, as she would fail: that the easiest way was to hang herself, if she wanted to die. That said Sophie cried a good deal, and went away. That said Mary Fisher was subpœnaed to attend said trial as a witness, and that during the trial, affiant learned that said witness was about to leave the city, and procured an attachment and had her arrested by an officer, under said attachment, and that affiant seeing that she was in custody, rested satisfied; but before the time came to examine said witness, she had by some means got out of the custody of the said officer, and gone away, and could not be procured on said trial. That said witness left without the knowledge or consent of affiant, and as he believes, of the prisoner or his other counsel, and that he intended to examine her as a witness.

That he has since learned that she is in Cincinnati, but not in time to procure her affidavit on this motion.

That he was present during the whole of Defendant's trial, and that neither the prisoner or his counsel consented to the separation of the Jury.

Wirt Dexter being sworn, &c., says: He was present at the trial of said Jumpertz, and assisted in making some experiments with screws on a door. That he used some screws that he bought at a hardware store, and some said to have been taken from Jumpertz's room. That affiant was assisted in making said experiments by the said Jury, and other experiments were made in which he did not participate. That affiant was not a witness in said cause, nor was he sworn therein; and while he was making said experiments the said Jury conversed with him, and he with them, about the said experiments, and while other experiments were being made he heard directions given by various persons as to the manner of making them—none of whom does he now remember, except Haven, the State Attorney, and C. P. Bradley. That he was not one of the counsel for defendant, but voluntary assisted in collecting the evidence of the Defendant.

That he talked with Mary Fisher, and she told him the same in substance as testified by McComas. That he did not consent to, or know her departure from the custody of the officer who had her in custody under attachment.

Abner Sutton, being sworn, &c., says: That he is a Deputy Sheriff of Cook County, and was one of the officers who had charge of the Jury in said case. That at noon of the first day after the Jury was empannelled and the testimony commenced, I was directed by John Everts, another Deputy Sheriff, to take one of the Jury by the name of Loomis to his own house, to see a member of his family who was sick. I took said Loomis, separately from the rest of the Jury, from the Court House, to his own house, in Edina Place, from one half to three-fourths of a mile. When arrived at his house he left me sitting in the parlor, and went up stairs, and was absent from me 10 or 15 minutes, or more. I did not know who was in the upper story of the house. I then accompanied said Juryman back to the Sherman House, where he and I took dinner at the public table. On the next day the same thing was done again, and the Juror remained up stairs the same time as before.

Ira Snow being sworn, &c., says: That during the argument of said cause by counsel one of the Jurymen, by the name of Bliss, was separated from the rest of the Jury, and left in the Court room while the rest of the Jury went to the Hotel to dinner, for half an hour or more; that affiant, as Deputy Sheriff, remained with said Bliss; that when the doors were opened he put the Jurymen in an adjoining room, and that a woman, purporting to be the wife of said Bliss, remained in the Court room and conversed with him during the time; that he did not hear them (Bliss and the woman) speak of the case except as to how long it would probably last; but they talked a good deal together in a whisper, which affiant did not hear and understand.

Simeon Y. Prince being sworn, &c., says: He is Deputy Sheriff of Cook County, and had charge of the Jury during the trial of said case. That on the evening of the second day of the trial, at the direction of Mr. Curtis, another deputy, he accompanied one of the

Jurymen named Loomis from the Court House to his own house in Edina Place, from half to three quarters of a mile; no one else went with us; when arrived at the house, he left me in the parlor, and went up stairs out of my sight, and remained absent about ten minutes,
82 and then came back to me with a woman, who, I was told was his wife; and after conversing with her ten or fifteen minutes, went back with me to the Court House; on the next evening, the same thing occurred again, in the same manner. During the trial the Jury were lodged at the Sherman House (an hotel), in two different rooms, five in one, and seven in the other, in different stories of the house. On one morning while the said trial was in progress, I accompanied the whole of the Jury to the house of said Loomis, and left him there, and accompanied the balance of the Jury about the distance of a block to the house of another Juryman; I there waited in front of said house while said last named Juryman
83 went in, and was gone out of my sight in the house some five minutes; I then went back to the house of Loomis, who was out of my sight and presence about fifteen minutes; no officer accompanied either of said Jurymen.

The following affidavits were filed in opposition to Defendant's motion for new trial:

1st. John C. Miller.—Knew Mary Fisher for about two years; she lived on Clark st.:
84 about a week before trial, was at an interview between said Mary Fisher, himself, the District Attorney, and J. Rehm. Being interrogated as to her knowledge of Sophie Werner, she stated that, she was well acquainted with her, first while Sophie was living with her husband; witness was then living with one Hulme; she never knew Jumpertz at any time. Sophie stopped at her house, on Clark street, with book in her hand; stated she had come from church; said she had caught cold waiting for the bridge; could not tell whether it was one or two years ago; was uncertain. Sophie said she was satisfied that Jumpertz
85 would not marry her, and that she did not know what to do—that she had a vial in her hand; said she had a good mind to take poison and kill herself; advised Sophie to get girls and open a house; said she was too old. A girl who was present advised her to go to the pier and drown herself; she said, had tried that twice, but when she came to the water she was afraid. The girl then advised her to hang herself. They were all laughing, talking that if she poisoned herself they would pump it out of her. Minna Debus, from Milwaukee,
86 was produced as witness. Affiant then and still believes to be the same person called by the defence Mrs. Davis.

2nd. James Taylor, Deputy Sheriff: Served attachment on Mrs. Fisher for defendant;
89 brought her into court; placed her in jury room in charge of Prince, a constable. Dexter
90 went into room. This was Saturday, first week of trial. Prince *told* him how she left.

3rd. S. Y. Prince, deputized to take charge of the Jury: Received Fisher when brought in on attachment; put her in jury room and locked it. Dexter applied to be ad-
87 mitted to said room to see witness; let him in; left the key in the door. Dexter soon came out, and he again locked the door and left key in door. Dexter visited witness several times; advised him to keep the door locked. About an hour after went and found witness gone; went to Dexter and asked him why he left the door open, and told him Mrs. Fisher
88 was gone. Dexter replied, "Is she? Well, I have been talking with her, and we don't want her, and if we do we can send for her." I went then and told Taylor.

Thereupon, and after argument of Counsel, the said Court overruled the said motion, to
95 which ruling and decision the Defendant excepted.

ABSTRACT OF EVIDENCE,

SET FORTH IN BILL OF EXCEPTIONS, TAKEN ON THE TRIAL.

This Evidence is, for convenience, arranged into several classes.

FIRST.—The Testimony relating to the conduct and declarations of the Deceased and Jumpertz, at Milwaukee, as proved by the Prosecution.

93 Minna Kache—I live in Milwaukee; I knew Jumpertz, from June, when they came there, till they left; it is a year since they left. I also knew Sophie Werner; they, Sophie and Jumpertz, lived next door to me, in Johnson street. I saw them every day. I supposed
94 she was his sister. They afterwards lived in Market street.

I might know Sophie Werner's hand-writing; can't tell. I have seen her write several
95 times. [Letter purporting to be written by Sophie Werner to Jumpertz, shown to witness.] I can't say for certain whether it is her writing. I think she wrote finer.

Sophie left Milwaukee, I think, the 3rd day of March, in the last train of cars. She had sent all of her bedding before. She took with her two travelling boxes, a mattress, clock, looking glass, and basket of things.

Question proposed by Attorney for the People.—What did Sophie Werner say to you at the time she was leaving?

To which question the Prisoner, by his Counsel, objected, on the ground that the statements of deceased were hearsay, and not admissible.

Which objection was then and there overruled by the Court, and exception taken by Prisoner.

Answer.—"Sophie said she wanted to go, now that Jumpertz had written to her to come; "that she was to sell every thing; if not, to put it up at auction, and sell it for eight or ten
97 "dollars, if it would not bring more. That he had written to her to come in the night train. "That she should veil herself, and speak to no one on the train. That they (she and Jum- "pertz) would not stay in Chicago. That Jumpertz had written that he intended to go to "St. Louis. That he for the present had hired but one room. That Jumpertz did not wish "to stay in Chicago with her; he had written so. That she would go to him, but if he did "not treat her better she would not remain with him. That he had written to her not to "bring on her clothes, he would buy her every thing new. At the last interview, she said "she had money. I think it was Wednesday she started. I have never seen her since."

On the cross-examination, witness says: She cannot be certain about the hand-writing of the letter shown her; can't say it is her letter, from appearance; she wrote finer and
98 closer together.

Defendant's Counsel moved to strike out all the testimony of this witness, relating conversations between her and Sophie Werner, on the same ground on which it was objected to, and also on the ground that it purports to state the contents of letters supposed to be written by Defendant to Sophie Werner, and no foundation has been shown for such secondary evidence. Motion overruled, and exception taken.

Witness proceeds: (Letter again shown witness.) I think this letter has been twice before shown me in Milwaukee, once in Mr. Beck's office, and once before in the summer;
99 I don't remember seeing it any other time. Mr. McComas, one of defendant's counsel, showed me a letter at Milwaukee at my house; I did not read much of it; Mr. McComas asked me if that letter was Sophie Werner's hand-writing; I said I did not know, could not

tell; I did not say it was her writing, nor give my opinion that it was; I never saw the letter that McComas showed me, before or since; the letter that McComas showed me is not the one shown me here in Court; I never read the letters of Jumpertz to her, and only know about them what she told me; the inner part of this letter is like Sophie Werner's.

Re-Examined.—Witness is shown some trunks and clothing, &c., and identifies them as the property of Sophie Werner; she, Sophie, said she had sent ten dollars to Jumpertz; she said so about a month before she left Milwaukee; she said Jumpertz had bought a lot at Milwaukee, and wanted to pay for it.

Re-Cross Examined.—By the inner part of the letter being like Sophie Werner's, I mean the contents are like what she said to me.

Direct Examination Resumed.—The contents of the letter that McComas showed me
100 were like what Sophie had said to me; that was what I said to McComas, but I said I was not certain as to the writing; the Sheriff was with McComas; the letter he, McComas, showed me was not the letter shown me here in Court.

Eliza Raabe, sworn, &c.: Live at Milwaukee; knew Jumpertz and Sophie Werner
104 there; I lived in the same house they did in Market street. Sophie said Jumpertz was her brother at first; afterwards she said the child she gave birth to was his. Sophie left Milwaukee on the 3rd of March; Jumpertz had left a little before Christmas. Immediately previous to Sophie's leaving Milwaukee, I did not talk much with her; the last time I saw
105 her to talk with her was a month before she left. I knew of her receiving letters from Jumpertz; she read to me the first one soon after he left.

Attorney for People proposes the following question:

106 Do you know, from any thing Sophie said to you, why she left Milwaukee?

Objected to by Defendant, on the ground that the evidence called for is hearsay, and not admissible. Also, because statements called for not confined to the time of her leaving Milwaukee. Objection overruled, and exception taken.

Answer.—"Because she said that Jumpertz wrote she should come; this was all she
"told me. Jumpertz had written that she was to stay there until September or October; he had been to see her in August; she sold some of her things.

"*Question by People's Attorney.*—Why, if you know, did she sell them? Objected "to by Defendant's Attorney, on the ground that the reason which she had or gave was "immaterial and irrelevant. Objection overruled, and exception taken. *Answer.*—The "said the Defendant had written to her to sell them. Defendant moves to strike out the "last answer, because it is hearsay, and purports to give the contents of Jumpertz's letter. "Overruled and exception taken.

"The Court here ruled, and decided that he would permit the prosecution to prove "any conversation of Sophie Werner, had with any person between the time Jumpertz left "Milwaukee and the time Sophie Werner left, relating to her reason for leaving; to which
107 "ruling and decision, the defendant by his counsel, then and there excepted. Witness "continues: Sophie Werner said to me, that Jumpertz had promised to marry her when "she came to Chicago; that was what she always said to me; she told me about selling the "furniture shortly before she left, when she got a letter from Jumpertz; it might have been "three or four days before she left; she came up to my room and said she had got a letter "to sell everything and go to Chicago; that she was to go on the 1st of March, but could "not sell her things and get ready till the 3d."

Counsel for the defendant here moved to strike out all of above testimony of said
107 witness, giving statements of Sophie Werner for same reasons as before given. Overruled and exception taken.

Witness Continues:—I don't know as I should know her hand-writing; I have seen her write directions on letters; (Letter of Sophie Werner, the same shown to last witness exhibited to her); the hand-writing I can't distinguish, but as to the contents it might be her's; it don't coincide with what I have seen on the covers of letters of her writing; that

110 was finer, and not so distinct. (Trunks and clothes shown her); these were Sophie Werner's.

Cross-Examined.—Sophie and Jumpertz lived friendly together; I should have known if they had not lived happily, as I could hear all that was going on in their room; they brought a good many things there from Chicago; Jumpertz bought others; he paid her
111 rent half a year in advance before he left; she had supplies when he left, for a long time: she was generally pretty gay, sometimes in her serious moments, desponding; she said, how unhappy I am, and if witness only knew how unhappy she was, &c.; said she had some sorrow at her heart. The Sheriff and Mr. MComas were at my house one or two weeks ago, and showed me a letter to read; I said after reading it, as I have said here, the contents
112 might be her's; but as to the hand-writing I could not be sure; I said it (the letter) spoke in the same tone; she often told me; I was asked if it was her writing; I asked to read it; did read it, and said, from the contents, it might be her's. I did not express any opinion only as to the contents; I did not say I thought it was her hand-writing. There was a young German going from Milwaukee to Germany, and Sophie told me she was going to
114 write a letter to her sister, and send a gold piece in it; she told me one morning that this young man had been to her room the night before, and was drunk.

Direct Examination Resumed.—The letter that McComas and the Sheriff showed me
114 is not the one shown me here in Court at all; I don't know if this is the same hand-writing as the one McComas showed me; I think it is nicer; the one the Sheriff and McComas showed me looked more like Sophie Werner's hand-writing; I can't tell whether this is
115 Sophie's hand-writing or not, with a certainty.

Frederick W. Raabe—I live in Milwaukee; I knew Jumpertz and Sophie when they
116 lived in Milwaukee; they came to live in the same house with me, I think about the fall of 1857, on Market street; I carried letters for Sophie to the post office directed to Henry Jumpertz, Chicago, Illinois; one letter had ten dollars in it.

Qustion by People's Attorney.—How was the address on the letter spelled—How was
116 the word Henry spelled? The Defendant objects to question, because the writing itself is the best evidence, and no foundation laid to introduce secondary evidence, and [illegible] spelling is not admissible as evidence of hand-writing. Objection overruled, and exception
117 taken. Answer: It was spelled *Henry.* At the time Sophie Werner left Milwaukee I had no conversation with her.

Minna Veitenheimer: I live in Milwaukee; knew Sophie Werner, and I think Jumpertz;
119 they lived two houses from me in Milwaukee. Jumpertz left about New Years or Christmas; Sophia left on 3rd of March.

Question by People's Attorney.—Had you any conversation with Sophie when she left,
120 about her reasons for leaving. Answer: Yes, I was there when she left.

Question—State the whole of said conversation.

Objected to by Defendant's Counsel, on the ground that evidence is hearsay. Overruled
121 "and exception taken. "She said Jumpertz had written to her to come; that they would live "together; that they would open business in some small town."

I had conversation with her about Jumpertz at different times after he left Milwaukee.

Question by People's Attorney—State what Sophie said to you in such conversations about Jumpertz. Defendant objected, because the evidence is mere hearsay, and inadmissible. Counsel for People said that defendant had set up that. Deceased died by suicide, and that he should show by acts and conversation of deceased, a state of mind indicating a tendency to suicide, and that this evidence was to rebut, by showing state of mind of the deceased. Counsel for defence admitted their intention to prove a tendency in the deceased to commit suicide, and did not object to order of evidence offered, but to its competency. Court overruled the objection, and defendant excepted.

Witness Answers: She told me she had letters from Jumpertz, and was going away.
123 She said she had received letters; that she was to follow him. Said that the last letter she received from him he wanted her to speak to no one, veil herself closely, and he would call

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for her; in a letter he had written to her before that, he had written to her to sell all her things, to send them to a store and sell them if they didn't bring but nine or ten dollars, and send the money to him, so that he could furnish them anew. This was what she told me.

Defendant moves to strike out the above testimony of this witness, relating the conver-
123 sations of Sophie Werner, purporting to give the contents of Jumpertz's letters, as inadmissible, for reasons before stated. Overruled, and exception taken.

Witness proceeds.—She said she would write to Jumpertz; that she would like a few days to sell the things, so as to get more for them; she would carry some few things with
124 her; he had written her to sell everything, the dresses too, as he would buy new ones; can't tell how long before she left, it was that she said she received these letters, perhaps three or four weeks; she used to come to my house almost every day; when she went away she bid me good bye; said she would write to me in four weeks; she was usually very gay;
124 I had conversation with her once in my store, and she said she was going to travel to
125 Chicago, and they (she and Jumpertz) were going to open business together; I can't say how long this was before she left, it might have been two months.

Counsel for defence moved to strike out all the testimony of this witness, relating conversations of Sophie Werner as mere hearsay. Motion overruled, and exception taken.

Cross-Examined.—I saw Jumpertz and Sophie together very little; what I did see,
126 they were very loving together on one occasion.

August Herzberg.—I live in Milwaukee; knew Sophie Werner, not Jumpertz; after
127 Jumpertz left, I had some conversation with Sophie relative to Jumpertz; three or four weeks before Sophie left, she came to my house; she said among other things in the course of the conversation, that she had received a letter from Jumpertz, in which she was called to come to Chicago, on the 1st of March; she said she couldn't do that, as she couldn't sell
128 her things; because she said she had been requested in that letter to sell all her things, even her dresses; she said she had received another letter after that, telling her to come; that she was to come veiled, and was to speak to no one, and remain at the depot till he (Jumpertz) called for her; I advised her not to do it; she said he was a smart man, and did
129 not believe in any God, and such religious matters as she was telling of; she told me she had lived with her first husband and had become acquainted with Jumpertz; she said she had stated that she and Jumpertz were brother and sister, because Jumpertz had told her to say so; she said that she and Jumpertz were married by an American preacher secretly; the very last time she said she had written to Jumpertz, she had written that she wanted to come to Chicago; she said she had written so several times, and was only quieted some time longer; I saw her when she was packing up to go; she said she was going to Chicago;
129 she said she had got money which had been paid for rent, returned to her; told me she had $60 to $80; said she would write soon; she has told me at different times, that she sent
134 money to Jumpertz at Chicago, to help him pay for a lot he had bought some days before she left; I told her not to send money to Jumpertz; she said she would not; she was of good temper; was often longing for Jumpertz.

The testimony of this witness, relating the conversations of Sophie Werner, was all objected to, and motions made to strike the same out, on same ground as other similar testimony, and overruled and exception taken.

135 Elizabeth Debus.—I am 15 years old, and live in Milwaukee; knew Jumpertz and Sophie Werner in Milwaukee; Jumpertz left Milwaukee before Christmas; after he left, Sophie said she wanted to follow him soon; she received letters, one or more a week; don't know who wrote them; I had heard he was her brother, but she told my mother it was not so; have
136 seen her write four or five times (letter shown to other witnesses, is exhibited to witness); I can't tell exactly if this is her's, but is the manner in which she wrote; I am not so certain about it, her writing was like this, not clear (plain), as far as I can recollect, she wrote as this is written; the form of the letters is like her's, perhaps a little longer, and not
138 so separate as this; she might have written this; I got a letter from the Post Office for

Sophie; she said it contained good news; she could go to Chicago, and when she got to Chicago Jumpertz would go with her to St. Louis; she said the day she left, she was going to Chicago; she said the day before that she was to have gone by the 1st of March, but
139 could not sell her things; she said he had written that she should be there by the 6th of March; from the time she got the letter, which she said contained good news, until she went, might be three weeks. (The testimony of this witness, giving Sophie Werner's conversations, excepted to, &c.)

139 Edward Vollert.—I live in Milwaukee; know Jumpertz and Sophie Werner; some time in August, 1857; they lived in same house with me in Market street; he left in December; she the 3d of March following; she told me she had received a letter from her husband requiring her to come to Chicago, and asked me if I would not return the money that had been paid in advance for rent of house by Jumpertz; I paid her back $20 and wrote a receipt, and she signed it (receipt shown and identified); she said she would
140 start the next day in the train; she said she was going to Chicago to her husband; Jumpertz had rented the room, I think August 13, 1857; paid rent in advance to December, then paid again six months in advance. The statements of Sophie Werner, to this witness, objected to, and motion made to strike out, and overruled and exception.

240 Catherine Herzberg.—I live in Milwaukee; I knew Sophie Werner, did not know Jumpertz.

Question by People's Attorney:—Did you have any conversation with Sophie, after Jumpertz left Milwaukee? Objected to by defendant on same grounds as before. Objection overruled, and exception taken.

Answer.—Yes, she talked with me about him several times.

Question.—What did she say? Objection overruled, and exception taken.

Answer.—I can't state the time; she said Jumpertz was in Chicago, and would write
241 to her when she was to come to him; she was not to come yet; she was to stay in Milwaukee till July before she would come; and that she was to remain with him, and she told me of the letters he had written her, and what was in them. Objection was made by defendant to her stating any thing that Sophie said was in the letters, because hearsay and no foundation or reason shown for introducing secondary evidence of their contents. Objection overruled, and exception taken by defendant.

Answer.—She was to come to Chicago, veiled, and speak to no one at the depot; that he, Jumpertz, would send a man for her, who would lead her to the house; that his room was four stories high.

That she was to sell every thing; to bring the ironing board and the hatchet; to sell
243 every thing but these; was to sell because they wanted to go to St. Louis; she said he had at different times written her to send him money. The child's things, she must sell; she said she would not; she could sell them in Chicago, if necessary; she said he had requested her not to show the letters, but burn them immediately.

She then told what she had written to Jumpertz. Defendant objects to witness giving relation of said Sophie Werner, of contents of her letters to Jumpertz, for same reasons as above given. Overruled, and exception taken.

Answer.—She said she had written to him that *she would come to see him once more, veiled;* would come for his sake. She cried then a good deal; she said she was to come
244 veiled; she said she had written him that for his sake she would come to see him once more; she said if he did not treat her well she would go away, and take a room and wash. It was on Monday she told me she had written to Jumpertz; she had the letter lying there; I did not read it; this was on the 1st of March; I never saw her write except that Monday; it was on first of March; I should not know her signature, but the letter I saw I think I should know. [Same letter shown to other witnesses exhibited to this witness.] I can't say with certainty, but I think the letter I saw was a little more bluish; the letter I saw had a blank at the head, of about four lines; I can't say with certainty that this is the

(1283-180)

letter; I did not go very close to her; can't tell certain whether this is the same letter I saw; it was to Henry Jumpertz, I think.

Question by People's Attorney:—Did Sophie state to you whether she and Jumpertz were married?

Objection by Defendant's Counsel, and overruled and exception taken.

Answer:—She said they were married by an English Priest. When she started she
246 said she was going to Chicago, &c.; she was glad to go; she sold me things; we were together almost every day while she was at Milwaukee.

Cross Examined.—I saw her cry several times during these times; can't say how often; she said she was so unhappy; she had to thank Jumpertz for her misfortune; said she had
248 married him in New York, and had moved with him to Chicago.

253 Anna Debus.—I live in Milwaukee; knew Jumpertz and Sophie Werner; they lived close by us, up stairs, three months from June, 1857. Jumpertz left in December; after he left I had conversation with Sophie about him.

Question by People's Attorney: State what it was. Objection and overruled, and exception by Defendant.

Answer: She said they were not brother and sister, but lived together; were not married; that they wanted to get together; she always wanted to go to Jumpertz; she said
254 she was going to Chicago, because Jumpertz had sent for her; they would go to St. Louis; she would sell every thing, and go with only a carpet bag, if she could get only nine or eight dollars; she sold the old things, but took some away, two trunks; I saw her the day she left Milwaukee.

EVIDENCE of Discovery and Condition of Body in New York.

140 Dr. Wooster Beech: I live at No. 92 West 26th street, New York; am a Physician; was called to make a *post-mortem* examination of a mutilated body, on 3d of April, last year. I was requested to do it by Coroner Hills, of New York city; I did it as Physician
183 and Assistant Coroner; first saw the body at Belevue Hospital; head of barrel was out when I saw it; it was taken out of barrel by John O'Brien, attendant at the Dead House. Some clothes were wrapped around it, and some in the barrel; we removed them; I examined the body and placed parts together; I found flesh cut and bones sawed; cannot remember every cut. (Shown a printed paper.) This is a copy of my report.

Defendant's Counsel objects to witness looking at paper, because not original, or made by witness. Court overrules objection and Defendant excepts.

Witness proceeds.—The head and inferior extremities separated from the trunk; the cut
145 that separated head commenced at Adam's Apple and continued back; the legs were both divided; the abdomen was laid entirely open, commencing at the bottom of the belly; the incision was continued partly through the breast bone; another cut at right angles about midway between the ends of last mentioned one and running backwards; other side not cut; the organs in this cavity were removed—the stomach, intestines, liver, pancreas, kidneys, bladder and uterus; the viscera of the thorax were not disturbed; the lungs and heart were healthy; examined the brain and found it very much congested—all the external surface of it; the internal part was healthy; the blood vessels on the surface were congested; I found two little incisions in one arm; a cloth was wrapped round the arm; I cannot describe the cloth; cuts on the inside of the arm at the bend of the elbow; it was the body of a female; body well preserved; the face presented a natural appearance; I left the head with O'Brien at the Hospital; I could form no opinion as to the cause of death; the body was in a whiskey barrel. (Barrel shown witness.) Think this is the barrel; if the stomach had been there I might or might not be able to tell whether the death was by poison; if I had found
146 a cancer I should have thought that the cause of death.

Cross-Examined.—The organs of the thorax were present with the *diaphragm*—all

healthy; lungs not congested; nothing peculiar—no blood in them; cut into cavities of the heart; found no blood; the blood vessels on the surface of brain were injected so as to be easily seen; in healthy condition they cannot be seen with the naked eye; the *sinuses* of the brain (a kind of blood vessel) contained blood; the brain on the surface was more con-
150 gested than in health; so far as I examined, this congestion might produce death; congestion of the brain seldom occurs alone; the cuts were continuous; did not penetrate the thorax; I cannot tell whether the cuts in the arm were made before or after death; not long after; one was in median—the other in cephalic vein; the former penetrated the vein; the latter did not.

The median is the vein we commonly bleed in; there would be a difference in appearances of incision if made long after death; but if made immediately after, could not tell whether before or after; the incision in median vein half an inch long, the other is small; the lips of the wound in the median vein were parted perceptibly, the other I think slightly; if made after death, and vital heat extinct, this would not be the case; the cut would not open; if made much before death, they would gape open; I noticed that some blood had passed out of the incision; it would not do so long after death; there was a slight coagulum of blood outside the vein, under the skin; the other incision did not look so much open; these gashes were smaller than is common with thumb lancets. Could not tell how long since death; did not examine the neck; I had no particular cause of death in my mind; appearances did not indicate any particular cause of death; my minutes say the head was divided with a dull instrument; I have never examined the brain of a person who died of strangulation. It ought to congest the brain; the heart would act more violently, and the blood would be impeded in its return to the heart, and the brain left fuller; in the minuter vessels, as in this case, I should expect congestion, also the same in the lungs; there are capillary vessels in both lungs and brain; I don't know whether there is any difference in the size between lungs and brain; I have seen the brain of a person who was drowned; the brain was not congested; cannot tell why. In case of death by irritant poison, the brain would be congested, and the lungs also; can't say whether more or less than brain; would
151 not look for indications on the surface; irritant and narcotic poisons would produce congestion of lungs and brain; I should look for the indications of poison in the stomach and throat, &c; during the examination I noticed no mark on the neck except the cut.

152 Samuel A. Hills.—In April last I lived in New York City; I was Coroner, have been so twelve years; my attention was called on 2d of April last to a barrel at the Hudson River Rail Road Depot, that contained a human body; had it taken out and examined it; head and limbs were separated from the body; called Mr. Keller, Superintendent of Poor, and had body sent to Bellevue Hospital; next day the body was examined by Dr. Beach; an inquest was held, which was adjourned, subject to my call, to give time to learn who it was; did not examine the body particularly. (As far as this witness goes, he describes the mutilations, same as Dr. Beach.) Could not tell, nor form any opinion as to the cause of
153 death, nor as to how long it had been dead; (a barrel shown) think this is the same barrel.

154 Hugh Masterton.—I am a detective policeman; live in New York; in the month of April last saw a barrel in 5th Ward, at Hudson River Rail Road Depot; on 2d of April I was passing, and my attention was called to it by a policeman; I saw the barrel again on the 18th of May; I saw the body at the dead house; Marshal Rehm, of Chicago, was there at that time; he came to the city in search of it; I went to City Inspector and found it; the body was buried on Wood's Island, and got an order to dig it up; disinterred it, except the head; found that was at the Bellevue Hospital, in charge of the head doctor; John O'Brien helped exhume the body; we brought it to Bellevue Hospital; we got the head
155 and put the body and head with the clothes that had been found in the barrel, all back into the barrel, and I had charge of them till they were shipped to Chicago; I examined the neck to find mark, but found none, except the cut; I gave it in charge of Marshal
156 Rehm; (barrel shown) that is the same barrel.

(12825-163)

Cross-Examined.—I examined the neck, because I had heard it stated that there was a mark on it of a rope; the body when I examined it, had been in New York one month and a half, buried and exhumed; the Doctors had put the head into alcohol.

157 Jacob R. Rehm.—Last season I was City Marshal of Chicago, and in that capacity went to New York in May last to find this body; arrived in N. York 15th or 16th of May; went to old Chief of Police Matsell; stated errand; got permission and gave directions to have body exhumed, and went on to Middlesex; found a woman named Eberts, and got of her little girl the letter from Jumpertz to Mrs. Eberts (produces it); I went to Lowell, found the trunks (containing clothing, &c., of deceased) at the Depot; returned with letter and trunks
158 to New York, and took the barrel containing body and shipped it to Chicago, and came home. An examination was made of it in Chicago by Doct. Freer and others.

159 John O'Brien.—I live in New York; am Keeper of the Dead House of Bellevue Hospital; I received the barrel, containing the body in the beginning of April; (barrel was open before, (describes state of the body;) helped dig up and repack the body, and identi-
160 fies it as same in the barrel received from the Hospital, and the same delivered to Rehm.

ABSTRACT of Evidence of circumstances which occurred in Chicago:

161 Jacob Rehm.—On Monday before arrest of Defendant, I visited room No. 30 Pomeroy's Building, Chicago; George Werner and C. P. Bradley were with me; it was about the 3d of May; describes the furniture, the chairs, tables, stove, bed, dishes, &c.; also a hatchet, saw, chisel, knife, some instrument to cut, think a lancet; could see no blood; found blood on the chisel; room is in the upper story of Pomeroy's block, facing the river;
162 nothing was taken from the room at that time; the Defendant was arrested I think on Wednesday, after the 5th of May, in the evening; arrested him in barber's shop on Dearborn street, about 9 o'clock at night; Bradley was with me; also Werner, and perhaps some one else; went to Jumpertz's room again next morning; the things were then carried to my office; one silver spoon was found in the room marked Sophie E. or W.; I have some of those articles now; the rest are delivered up to the order of Jumpertz; we kept back what we wanted for evidence; I have the saw, instruments, letters, and box with old irons in it; the Defendant was taken to my office; when he was arrested, John C. Miller (City Attorney) and Bradley were present; (witness here relates defendant's confession, for which, see this abstract under proper head).

187 Israel L. Edwards.—In March last, I was employed at Smith & McClevy's, 130 South Water street, Chicago, half a block from Pomeroy's building; I saw the Defendant there on the 9th of March, 1858; he came there, and asked me if I had a barrel to sell; I sold
188 him a whiskey barrel; I sold it to him for fifty cents; he had but half the money, and pawned his gloves for balance, and came and redeemed them.

188 John J. Johnson.—In March last, I was clerk of the Michigan Central R. R. Freight Office; on the 16th day of March, I received barrel at Depot of a young man who resembled the Defendant; can't say he was the man; it seemed to be a camphene barrel paper on it marked 185 Leonard Street, N. Y.; I think Defendant is the person who delivered the barrel, am not certain.

188 Michael Fitzgerald.—In March, 1857, I was Clerk in Michigan Central Rail Road Office, and saw the barrel mentioned by last witness when delivered at the Depot, and think Defendant is the man who delivered it, am not sure.

189 George Werner.—I knew Sophie Werner, she was my brother's wife; my brother's name was Frederick; have known Jumpertz two years: my brother Frederick came to Chicago three years ago; first worked in Young America; then had a shop of his own; I knew of Sophie and Jumpertz living together in Chicago; they lived together in Illinois street; I boarded with them, she went to Milwaukee, then he went; she was in family way; I never saw her again alive; I saw her after she was dead, in the Court House; she was cut up; I knew her by the eyes, &c.; had not seen her for about a year.

Jumpertz came back to Chicago from Milwaukee in December; Jumpertz told me the
190 child was still born; since Jumpertz returned from Milwaukee we worked together at Frazza & Ribolla's, April last; I have been in No. 30 Pomeroy's Building; Jumpertz took me up there the first time; it was before April; Jumpertz asked me if I smelled anything; I said "Yes;" he said it was the gas; I once asked him if Sophie was still there; he said
191 "No," she had gone away; said she had gone to my brother's at Rochester; Jumpertz rented the room to sleep in; so he told me; I can't say when I went to room No. 30 with Rehm and Bradley; I had lodged there with Jumpertz since 27th April; I saw Jumpertz in Jail; he had a ring that belonged to Sophie; I once saw Sophie Werner take something at my brother's shop; she took it out of a paper and put it in a tumbler and took some of it, and
194 threw away the rest; it was eight or nine o'clock P. M.; I went to Weglehner's and told them; I felt bad and told them, and he (Weglehner) went to the shop to see her; I told him she had taken something.

197 *Cross-Examined.*—I told Weglehner she had taken something; I could not tell if it was poison; she took it in the back room of the shop alone; I saw her through the door, which was partly open; I could not see the color of what she took; it was dark where she was; I saw her go in there and take it; I said nothing to her; I was troubled about it; she had often before that wanted to kill herself; she once started to go into the water, when she came to the water she was afraid, it looked so black; I saw Sophie the next day after she took the stuff in the shop; she was vomiting; I said nothing to her about it.

Direct Examination Resumed.—In last of February or 1st of March Jumpertz got a letter from the Post Office and came into the shop with it, and took off the envelope and read it, and said he would keep it, as the letter contained something about her committing suicide; he read to us that she was to come back and kiss him once more and then go away to Rochester and kill my brother and herself too; he said he would keep it so if she committed suicide he would have something to show; I don't recollect what he said the letter would do for him; I took the letter in my hand; didn't read it; John, a boy, and either Frazza or Ribolla were in the office; Jumpertz had suggested to me about the time he took
203 room No. 30 to occupy it with him.

208 Joseph Mohr: Have lived in the city two years and a half; knew Jumpertz; since one year ago last December; boarded with Defendant in Madison street at Mr. Cook's; I left there because they could not keep me conveniently; so did he, I suppose; when he left, said he had leased a room on Water street; I had conversation with him two or three weeks before he was arrested; we were talking about a girl; he said he had to be careful, because he was in a scrape once; he had lived with a woman in Milwaukee, and people thought they were brother and sister; that the woman became with child; I asked him what had become of her; he said he had settled with her, or arranged with her, or ended with her.

207 Ira Coleman: Have lived in Chicago twenty-one years; knew Sophie Werner; knew her soon after she came to Chicago; her husband came first, and a girl was living with him; the coming of Sophie kicked up a muss; I also knew Jumpertz; I knew that he and Sophie
208 lived together by report before she went to Milwaukee; said she was married to Jumpertz.

209 Defendant moved to strike out last statement. Court overrules motion and Defendant excepts.

Witness proceeds.—Saw her body after she was dead; I thought she always had remarkably good spirits under the circumstances; weighed I think about one hundred and forty pounds. I heard of her taking poison; I think Mrs. Weglehner told me of it the next day; I think I saw her the next day; did not know she was sick; she told me of her troubles; I thought she was a remarkable woman to bear up under her troubles as she did.

Earnest Reidel.—Thinks the weight of Sophie Werner was about one hundred and forty-five pounds.

George Anderson.—Knew Sophie Werner; saw and recognized her body after she was brought back from New York.