TRIAL AND EXECUTION

OF

EDWARD ALONZO PENNINGTON

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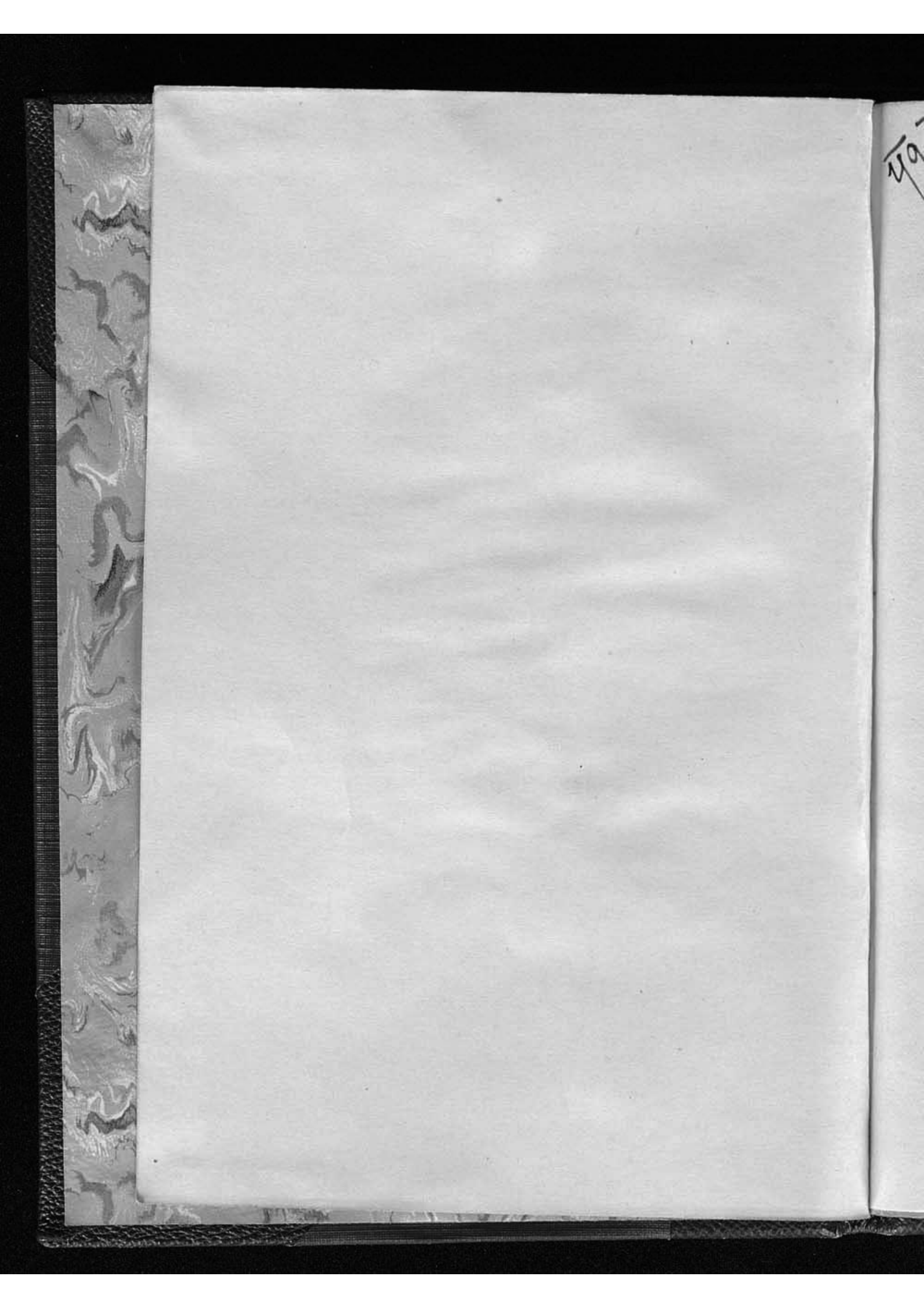

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THE LIFE,

FLIGHT, CAPTURE,

TRIAL AND EXECUTION

OF

EDWARD ALONZO PENNINGTON,

THE MURDERER OF SIMON DAVIS.

Pembroke Review Print, 1898.

PREFACE.

The life, flight, capture, trial and execution of Edward Alonzo Pennington for the murder of Simon Davis was first published in book form in 1846. It was next published in THE PEMBROKE REVIEW in serial form. The old books disappearing and having many calls for the narrative in a condensed shape, we concluded to issue this book. The crime and punishment of Pennington was the first murder and legal hanging in Christian county.

SHORT BIOGRAPHY OF E. A. PENNINGTON.

For the materials, from which we have compiled the following brief and rapid sketch of the life, morals, and acts of our hero. we are indebted to the obliging kindness of M. Edward Dulin.—This gentleman was well acquainted with Pennington. They were reared in the same county and neighborhood, were school mates, room mates, and play mates, and consequently Mr. Dulin's opportunity to know and understand the character and disposition of the subject of our pen, was such as entitles his narration to our respectful consideration; while his standing in the community, of which he is a member, is a guarantee for our faith.

It is not our design to record a minute and circumstantial history of Pennington, this would indeed prove a herculean task, and tax too severely the patience of our readers. We propose merely to record a few prominent facts, by the aid of which a just and correct idea may be formed of the true character of the man. (For this purpose a few well established and indisputable facts will serve as effectually as a regular and connected history of all the varied and checkered events, which go to make up the sum and substance of an individual's character. "Words are leaves; deeds are fruit.") A concise relation of this kind as plainly indicates the bent and inclination of the mind, and as satisfactorily establishes the general character of a man, as a more detailed account of his whole course of life, for the latter but develops the same general principles and features modified by the varied circumstances that give birth to his different and multiplied actions. (As this is all aimed at in the following remarks, we shall "nothing extenuate, nor set down aught in malice.")

(There always exists in the public mind a desire, which is both reasonable and proper, to know something of the previous and early history of an individual whose acts have rendered him notorious, whether such notoriety be the result of his good or evil deeds. When convicted of some heinous offense, as in the present instance, the probability of his guilt or innocence will be enhanced or diminished, according as his early associations, habits, and education point to this or that conclusion.) If from his previous history we learn that, at a very early and impressive period of life, he was exposed to the influence of associations, which are calculated to sear the tender conscience, demoralize man's nature, corrupt the affections, familiarize with guilt, and harden the heart for the commission of crime; our faith in his innocence, when circumstances have connected him with the perpetration of an outrageous offense, will be proportionably weak and doubtful. One whose youth has been passed in the midst of wickedness and crime, whose evil propensities have been strengthened by indulgence, and whose companions

are graduates in vice, is pretty sure to become an educated, and accomplished villain, and will be prepared for the execution of any purpose a vile, malicious, and avaricious heart may suggest. Such a nature when united to a strong, vigorous, and active intellect, as in the case of Pennington, renders its possessor capable of conceiving and executing well connected and extensive plans of villainy. Unsusceptible of any noble or generous emotions, such a man is admirably fitted to become a master spirit among the depraved, to shape the actions of others so as to obey his will and purposes, and usually accomplishes his end by the most crafty and inscrutable means. Thus he goes on from one degree of wickedness to another, daily and hourly improving in the knowledge of guilt and crime. Long impunity renders him bold, and repeated escapes inspire him with confidence, until, having filled up the measure of his iniquities, some insufficiently guarded act places him in the power of that even handed justice, whose high commands he has hitherto contemned, and so flagrantly, so repeatedly violated.

But that we may not lengthen out this work to an inconvenient and unnecessary size, we proceed without further introduction to the subject matter.

(Edward Alonzo Pennington, the person of whom we speak was born in Christian county, in the State of Kentucky, some time in 1811. Christian county is situated in the Green River country, a section rich in resources and minerals. It is the great thoroughfare for Western emigrants, and possesses great conveniences for water communication in all possible directions. At the period of Alonzo's birth his father resided on the farm, now the property and residence of one Mrs. McFaddin, a lady of whom mention is made on the trial. This farm is situated about seventeen miles northeast from Hopkinsville, in a rough broken country, the successful cultivation of which is greatly impaired by the frequent sinks common to this portion of the State.)

Old man Pennington was a Justice of the Peace, then Sheriff, and subsequently offered himself as a candidate to represent the county in the Legislature.

(For the education of his children, he engaged the services of a private teacher, which situation was at one time filled by a Mr. McFaddin, and at another by Mr. Thomas V. Morrow. While the latter gentleman resided at old man Pennington's, he unavoidably witnessed many things calculated to awaken suspicions that all was not right, or as it should be. Persons, with whom he had no acquaintance, or only knew by name, frequently came after nightfall, bringing with them horses, and both men and horses disappeared again before day. Whence they came or whither they went, Mr. Morrow could not satisfactorily ascertain. These mysterious transactions determined him to leave the family, which he accordingly did, and he even went so far as to get up a petition setting forth reasons why the office of Sheriff should be denied old man Pennington, but his efforts were not begun soon enough

to prove successful, farther than to gain him the everlasting displeasure of his quondam employer.

Under such circumstances, it is not at all surprising that Alonzo should, at a very early and tender period, give intimations of a depraved mind and heart; consequently we find his youth distinguished by a propensity for low tricks, base deceits, debasing frauds, and an utter contempt and disregard for truth and honesty. His companions were to be found in that class of boys whose dispositions accorded with his own, while he sedulously avoided those of nobler aims and purposes. He was frequently detected in petty thefts, and big lies, and his courage was of that cautious and prudent nature, which seldom exposes its owner to much physical suffering. While boarding at Mr. Dulin's, as a pupil of one Mr. Evans, in more advanced youth, he would employ agents to affect his wicked and malicious ends, not daring to appear himself in the matter. On one occasion he instigated a lad to cut in pieces a coat belonging to a son of Mr. Dulin, in order to gratify his feeling of revenge and jealousy. Injuries of this class and character he would unblushingly perpetrate, and seemed to derive peculiar gratification in slandering and defaming spotless reputations, especially those of young ladies who manifested a repugnance to his society. He also manifested, at this early period, that spirit of covetousness which, in after life, urged him on to the commission of the most daring acts, to invest himself with possessions naught but crime could acquire. Even in his school boy's days, those hours that are usually so free from guile, when the young heart is full of hope and brotherly affection, and the generous feelings are in healthy exercise, this individual was cherishing the worst passions of fallen nature, and educating them for deeds of darkness and horror. His increase in crime kept pace with his growth in years; aye, it may be said to have outstripped his years, for Pennington was one of those precocious geniuses, whose development is rapid and wonderful. When about eighteen or twenty years old, Alonzo furnished a pretty sure indication of that policy which governed his after life, and gave a fair display of that tact and ingenuity for which he was so deservedly renowned, and which on many occasions came to his aid, and was his only succor in dangerous and difficult situations; for it was a remarkable characteristic of the man to accomplish his ends and purposes by means and agencies others would scarcely have conceived, and to escape from perils which to most others seemed unavoidable.

The case is as follows, and constitutes one of the first in a long and varied series of dishonest and artful exploits. An Irishman, by the name of McGuffin, owened a very fine stallion. He selected as stands the house of F. P. Pennington, (Alonzo's father,) Col. S. D. B. Stewart (Alonzo's brother-in-law) and that of M. H. Allen, or, according to some, one Mr. Clarke. It was the earnest desire of Alonzo to get this horse into his own possession, which by various means he endeavored

to effect, but hitherto without success. To accomplish his purpose associated with himself one Vance, and they two, others are suspecte matured a scheme of very cunning design and delicate execution. O Sabbath evening, this man Vance and Alonzo Pennington came to M Clarke's and enquired for McGuffin. Alonzo had a bandage about h face, and complained of tooth-ache. He prevailed on this Irishman accompany him to Col. Stewart's on business as he-said. Shortly aft they arirved, Pennington feigned to be taken worse, whereupon an a plication of hot salt was recommended. Accordingly two small ba were prepared, one of which was filled with salt, the other with ashe That which contained the salt was first applied, and while McGuff was looking on, the bag filled with ashes was in the mean time plac on the hearth near the fire, for the purpose of keeping it warm. A exchange of bags was affected in the presence of McGuffin, withou however, his knowledge of the fact. Pennington complained that th ashes were hot. McGuffin corrected him, and remarked that it w salt, not ashes, upon which Alonzo offered to bet the bag did in reali contain ashes. Not aware of the exchange of bags, both of which M Guffin supposed were filled with salt, he proffered to bet his hors Alonzo remarked he had nothing of equal value to stake against th animal. Vance then put up a certain sum of money, and Stewart ten dered on the part of Pennington, a negro woman with one or two o her children. The stakes being now arranged, the bag was emptie and found to contain ashes. Poor McGuffin, the dupe of this precon certed fraud, was much mortified at his loss; but before he had time t think on the subject, one Hoskins was hastily sent off to take the hors to Russellville, out of McGuffin's reach. In a day or two after thi occurrence, seeing the distress of the poor Irishman, and provoked a the combined fraud practiced upon him, David Myers proposed goin with McGuffin, to recover the possession of his horse. Their missio proved successful, the horse was regained, but fearing some injury McGuffin settled up his business and departed the country; since which time he has never been heard of, nor from.

It is somewhat a singular coincidence that one of the very first and last acts of fraud and violence, perpetrated by this man, Pennington, should have selected for their respective victims a son of the Emerald Isle. Was it the result of unmeaning chance?

(Alonzo Pennington was frequently concerned in stealing negroes, or kidnapping, one or two instances of which, out of many, we will record.)

(A man by the name of Brown lost some negroes, and suspected Pennington of being concerned in their abduction, as he had now become an object of pretty general distrust and suspicion.) While making inquiry into the matter, he was informed, by one Sisk, that the negroes were at Pennington's, and Sisk proposed to go with him to regain them. They accordingly went in company, and on their arrival at

Alonzo's fence, Sisk made a peculiar whistle, at which signal the negroes came, but seeing their master, Mr. Brown, turned and fled. Sisk fired off the gun which he held in his hand, which Brown supposed was a signal for his own destruction, and thereupon he fled.

Some short time after this Brown was shot at a neighbor's house, where he was spending the evening, being struck with several balls. His death was very opportune for Pennington, as he had brought suit against him for the negroes, and was the only witness to swear to their being at Alonzo's house. By what or whose agency his death was wrought is a matter of suspicion only.

One instance more we will notice. There belonged to the estate of a Mr. Groves several negroes, who were under the care and direction of Squire Jones, guardian of the heirs. While hired out these servants suddenly disappeared. Vance, who formerly lived in the neighborhood of Pennington, and who was one of his intimate companions, had married and settled near Nashville, Tennessee. Owing to some difference, this man, Vance, and a near neighbor were at outs, as it is termed. An old negro woman, who conceived herself to be harshly treated by Vance, or the family in which she was staying disclosed the whole matter to his neighbor, confiding to him her own name and that of her children. This individual wrote to Squire Jones, imparting the information he received from the negro, but did not subscribe his name, for fear that he would be visited with some injury should the letter be intercepted, or his agency discovered. The letter, however, fell into the proper hands. Squire Jones acted in accoedance with its suggestions, and regained the property. The matter was hushed up by means of Pennington's friends, so that he was not prosecuted for the offense. These occurrences took place during Pennington's residence in Mhulenburg county.

On acccunt of the frequent losses in property of this description, and other depredations committed on them, the citizens of that county, aided by those of the circumjacent ones, formed a company of Regulators, the object of which was to apprehend and bring to justice offenders against the laws, and drive off such as were known to be rascals, but whose craftiness and cunning enabled them to escape detection, and consequent punishment. Through fear of their operations, and knowing that he was an object of distrust and suspicion, Pennington moved to Hopkius county, and established himself there for a year or two, perhaps several years. During all this period there existed a company of horse thieves and counterfeiters, whose operations and association were believed to extend throughout (the whole of the Western and Southwestern States, among whom Alonzo Pennington was thought to be a leading man.) His rapid growth in property, without any particular or special occupation, and his known intimacy with the suspected members of this audacious gang, all of whom were familiar at his board, and who used his house as a stopping place, gave strength to the sus-

picion. But we must pass on to other matters and things.

The next circumstance in the history of our hero, which we will mention, is the "Box Affair," as it is called. This was an ingenious fraud, and, one in which Alonzo was deeply implicated. Doubtless he was the originator and inventor of the deceit. It was a scheme which addressed itself to the cupidity of individuals under the insidious veil of speculation, and was so planned as to render the purchaser implicated to a certain extent, and in a certain manner. The danger and certainty of exposure was thus artfully avoided and averted.

Boxes of different sizes and capacities were provided, and filled with some weighty substance, which the vendor represented to contain genuine silver coin. The amount was branded or marked on the outside of each box. This coin was said to have been moulded from an ore obtained near the Rocking Cave, a place whose location we have not been able to ascertain, and is supposed only to exist in the fancy. A company was formed for the purpose of working this mine, and had proceded at much toil and expenditure of means to coin the metal into money, before they ascertained that it was an unlawful act. To save themselves the outlay, as far as practicable, they offered to sell the coin at one half its real value. This they were compelled to do secretly, and enjoin the same caution on the purchaser. By such representations many credulous persons, stimulated and pricked on by a thirst for gain, became purchasers. To render the deception more perfect, good and genuine coin was taken from a similar box and exhibited as a sample. This device put to flight all doubts. A brother-in-law of Pennington became the purchaser of two boxes. In the first instance he was taken by one Richard Bunch to a private and secret place in a body of woods. There, near an old tree, and covered with leaves, he was shown a box, with the imposing mark of six hundred dollars, which was offered to him for three hundred dollars They then withdrew, and he paid the required sum of three hundred dollars. On returning to take possession of his purchase, the spot was found, but the box was gone, nor did he ever see the box or the vendor after that. He told the circumstance to Pennington, and remarked that he was determined to buy a second declaring that he would not be defrauded again, but would have the box at all hazzards. Alonzo informed him where he could purchase another, and accompanied his brother-in-law to some point on the Ohio, where he introduced him to an individual who had them for sale.

As at first, he was conducted to a private place in the woods, the box was exhibited, also some good coin of the same denomination, and he became a second time a purchaser. He grasped his property, mounted his horse, and after a hasty ride of a few miles, dismounted to examine his treasure. His mortification was extreme, when, breaking open the box, it revealed a few pieces of counterfeit money, an old ax, a worn out grubbing hoe, and sand.

Pennington and several others played off a similar trick on a young

man, a citizen of Hopkinsville.

Such was the celebrated "box affair," about which so much has been said, and which made a considerable noise for the time in that section of the country of which we now speak. But this was only one of the many irons Pennington was heating and working off at one and the same time.

Such frequent and daring impositions, and the breaking open of a store in Greenville, excited the citizens of a portion of Hopkins and Mhulenburg, who again formed a company of Regulators, to search out and apprehend the scoundrels who practiced these villainies. Seeing that Pennington and his associates escaped punishment when brought to trial, by their secrecy and the facility with which evidence in their favor was procured, this company arrested Alonzo, administered some wholesome advice, and ordered him to leave the county within a specified time. This order being unheeded, he was a second time arrested, and would have been hung, but for the interposition of some influential persons. He wisely concluded to act upon this latter hint, as delay now seemed dangerous, and accordingly moved over to Christian county. Here he located himself near the sinks of Little River, which, on account of its rough borken features, appeared well adapted to his habits and purposes of life.

Prior to this move of Pennington, the Regulators arrested several individuals, among whom were three by the names of Miller, Gatlin and Gaines, supposed to have been engaged in the breaking open and robbery of the store before mentioned. These men made separate confessions, apart from each other, which were remarkable for their exact correspondence. From these confessions it seems that Pennington was implicated in the different plans that were formed to enter and rob the Branch Bank at Hopkinsville.

Four separate and distinct schemes were adopted, and their execution attempted, all of which were fortunately frustrated. The first plan, to break through the wall and enter the vault from below, was the suggestion of our hero. To examine the premises and ascertain the practicability of this plan, suitable and competent persons were employed. Their report was unfavorable to this method of prcceeding.

The next proposal was to kill the clerk, and force the door of the vault. The conspirators accordingly advanced to the town, halted, and sent two of their number to execute the plan. According to their report, the clerk had retired and was so sound asleep their knock was unheeded, and thus the second attempt failed. We have heard, however, that two suspscious persons did knock and were admitted by the clerk to his room in the rear of the vault, but as a friend was present, and the bank well supplied with fire-arms, after one or two unimportant inquiries, they retired without offering any violence.

The third effort was to be made. This plan was to muster their entire strength, to the number of one hundred, surround at the dead of

night, the house of the cashier, get possession of the keys, keep him under a strong guard, and thus affect their object. The prosecution of this scheme was for some reason or other abandoned.

Not content with these signal failures, this daring project of robbing the bank was persisted in. They now resolved boldly to attempt the walls. For this purpose the company again advanced, and halted in the rear of Glass' Stemmery. Their instruments were all prepared, and Pennington was set to dig a vault for the temporary deposit and concealment of the money. This he went about with a right good will, as he thereby avoided the personal danger to which those who should make the attempt to break in the walls would be necessarily exposed. The reason assigned for this last failure is, that persons were passing to and fro, and seemed to be on the watch. Thus were they foiled in all their efforts to execute the projected robbery. Other efforts would doubtless have been made but for the arrest and confessions of these men.

The truth of these confessions is fully established by the examination made afterwards. The instruments were found concealed in the neighborhood of the Stemmery, and there too was the begun vault, designed for the reception of the money. While in jail, Pennington confessed that his portion was to be, in case of success, ten thousand dollars.

From the foregoing, selected at random from among the many and varied acts of his life, a pretty fare idea may be formed of the true character of Edward Alonzo Pennington. His tact, ingenuity, and utter disregard for truth and honesty, cannot fail to arrest the attention of the reader, at the same time that he is prepared to believe this man capable of any crime the accomplishment of his ends might suggest. And though his cowardice was such that he would scarcely undertake, single handed and alone, to shed the blood of his fellow man, yet he would always have around him, and obedient to his will, those who dare, for pay or favor, do such a thing. His manners were artful and insinuating, and he could assume at will a gentle, kind and affectionate bearing, well calculated to deceive the unsuspicious and confiding man. In fine, he possessed all the qualities and qualifications of a leading spirit among the depraved, whom he could well guide and govern by his counsels and judgment, and needed only a fearless spirit to have fitted him to lead in deeds of bold and reckless daring. With sufficient personal courage he would have made a bold and able brigand chief, compared even with the far famed robbers of the Alps, or the rougher bands that once infested the mountains of Scotland.

Somewhere about the year 1838 or 1839, an Irishman, by the name of Simon Davis, married and settled in the northeastern portion of Christian county, near the Sinks, as they are called, of Little River. Six or seven years after this Pennington, driven off, as before related, from Hopkins by the Regulators, located himself in the same neighborhood, about a mile and a half from the residence of Davis. By his marriage Davis came into the possession of property to the amount of

eight hundred or a thousand dollars, but saving and except the connections formed by his marriage, had no friends or relations in this country. With this man Pennington cultivated a familiar acquaintance, and soon found means to ingratiate himself in the favor and friendship of Davis; doubtless he advised with him as to the management of his little farm and affairs, and bestowed on him trivial favors, such as were calculated to arouse and kindle up the grateful feelings of a warm and generous nature, characteristic of the sons and daughters of old Ireland. At all events they became very intimate, and Davis seemed to love to be with the man who afterwards wrought out his destruction and death.

Early in the spring of 1845, the wife of Davis died. His ties were now severed, and he soon became involved in some unpleasant and unfriendly altercations with his wife's relation, about the little property she possessed. This rendered his longer residence in the neighborhood disagreeable. He grew daily more dissatisfied, and determined at last to sell out and leave the country. Of all which Pennington was duly apprised.

Up to the 9th of May, following, and on that day, Davis made repeated efforts to dispose of his effects, with the avowed purpose of moving to the State of Illinois. The 9th of May was the day for Battalion Muster at Pleasant Hill, the name of a meeting house in the northeastern part of Christian county. Davis was seen to be there and held conversation on the ground with different persons. Late in the afternoon he was seen in company with Pennington and several others, and one individual testifies he saw them leave together. At all events, Davis was never seen after that day, until his dead body was found and recognized as will hereafter appear. His horse, however, was seen in a body of thick brush, near one Shuffle's house. This circumstance induced the suspicion that he had been murdered, and an effectual search for his body was forthwith instituted.

The neighbors and friends of Davis now determined to arrest Pennington and a man by the name of Cisney. A company was accordingly formed for this purpose, and hearing that Cisney had dined at Mr. Williams' on that day, started off in pursuit. They followed on as far as Hopkinsville, at which place they paired off, the better to scour the different roads. Two lads took the turnpike from Hopkinsville to Princeton. This was the route Cisney took. At the widow Whyte's, some six or seven miles from the former town, they discovered their man walking the yard, and alighted, as if to get breakfast. In a few moments they had him apprehended and confined, and retraced their way to Hopkinsville. Being taken to the office of a magistrate he was searched as if for counterfeit money, and a book, the property of Mrs. Whyte, was found upon him. From thence he was escorted by the company to Pond River, and for two days kept under a strong guard. Though often and closely interrogated he made no confession.

About this period the citizens of Hopkins, Mhulenburg and Christ

ian, having lost many horses and suffered in other respects from the depredations of a band of villians that harrassed the whole country far and near, called a meeting at Antioch, for the purpose of mutual aid and protection. At this meeting, which was well attended, a Safety Society was organized for the purposes above stated, and numbered the greater portion of our most respectable, intelligent and orderly citizens. One dollar was the charge for membership. This contribution raised a fund which was to be expended in employing persons to pursue after and capture stolen property, and the thieves also, if possible. It was not, as some have unadvisedly represented, formed in violation of law, for the purposes of punishing suspected and guilty persons, but to aid and co-operate with the law, by arresting and delivering over to the constituted powers, such offenders as would have escaped altogether. The good results of the association are witnessed in the security of property that, from its nature, must be more or less exposed to such depredations.

To this meeting Cisney was brought, and closely guarded, to prevent escape. When the meeting adjourned, he was taken back by the same persons who brought him with them. As they returned home to Pond River, the company alighted to rest awhile under the shade of a spreading oak. Cisney dismounted also, and the whole party, with the exception of two persons, seated themselves on the ground; these two individuals walked off into the bushes. They soon returned, each with an armful of hickories, which, with a rope, they silently laid down near Cisney's feet. Not a word was spoken. Cisney became alarmed, the tears began to roll down his pallid cheeks, and he voluntarially proposed to retire with three of the company whom he named, and to whom he said he would make an unreserved confession. His request was granted, the parties named went with him so far as to be out of hearing of the others, and he then disclosed to them who murdered Davis, and where the body was consealed. He confessed that he held the horses of Pennington and his coadjutors, while they committed the deed, but took no further part in the murder. A party repaired to the spot indicated, and found the body of Davis, as Cisney informed them. Cisney was then taken on a State's warrant, and lodged in the jail of the county. His trial was postponed at the ensuing term of the Circuit Court. The Court had scarcely adjourned when the jail was broken, and he, with other prisoners, made their escape. While in prison the jailor was notified that he (Cisney) had escaped from prison in Mississippi, and was requested to detain him until they could come up to receive him, if on his trial he should be acquitted.

In the mean time, the community became greatly excited, and bodies of men went in all directions in search of Pennidgton. His house was watched by day and by night, and every effort made to arrest him. When it was ascertained beyond a doubt that he had fled, a reward of $500 was offered by private contribution, and an additional one of $500 by the Governor, for his apprehension.

Dr. Bourland, of Ballard county, was induced to believe, from information he received, that Pennington was in Texas, and after long and anxious consideration on the subject, determined to follow after and secure him it possible. An account of the pursuit, capture, and return of Pennington will be found next in order.

The foregoing is submitted, not as a complete and accurate history of our hero, but as necessary to a clear apprehension of the circumstances that led to his arrest, as also to render intelligible certain portions of the evidence, which might otherwise appear confused and mysterious. Enough. however, is said to impart some idea of the character and disposition of the murderer of Simon Davis, which is all we aimed at, or promised the public.

DR. R. BOURLAND'S HISTORY OF THE ROUTE HE TOOK TO CAPTURE AND BRING BACK PENNINGTON.

Domestic and professional duties prevented Dr. Bourland from furnishing the compiler of this work a more minute and detailed account of his journey to Texas; the character of the people and country, through which he passed, and the difficulties, trials, and dangers he endured in the apprehension of, and return to this State, with Pennington. Enough, however, is furnished to establish the Doctor's reputation as a man of fixed resolution, indomitable perseverance, and undaunted nerve. It were as well to state here that it was rumored, and generally believed, that Pennington was entrapped by a part of his associates, and brought back to secure the reward offered for his apprehension. Some even went so far as to implicate his relations; while others, more ultra still, involved Pennington himself, making him a participator in his own arrest, to share the promised reward. None of which is true. Dr. Bourland was and is a stranger to Pennington, and his wicked associations and executed the labor of Pennington's arrest almost alone. He is a man of respectability, inteiligence, and good standing in his profession. But few persons were admitted to his confidence, and those were such as he could rely on. Himself and brothers, who reside in the South, near the scene of arrest, with others, whom it was necessary to call on for aid in the immediate execution of the work, were all and the only persons engaged or interested in the enterprise. It was a matter of prime importance to the success of the undertaking, that none of Pennington's relations, connections, friends, and associates, should be apprised of the plans; much more important was it, that Pennington himself should be kept in profound ignorance of the contemplated movements. It is not necessary, however, to enter into an argumant to show the unreasonableness of the rumors; for common sense will, unaided, point out the utter foolishness of such fanciful creations. The existence of such rumors makes it imperative on the author of this book to say so much on the subject, while a sense of justice renders it obligatory on him to justify Dr. Bourland and exculpate him from the injurious charges he has sustained on account of the prompt, energetic and successful part he acted in the apprehension of the artful murderer of Simon Davis. These false reports were doubtless generated and circulated by the immediate personal friends and relations of Pennington, with a view to excite and forestall public sympathy in his favor; that it might go well with Pennington should he be, in fact, arrested and brought to trial. We might also mention, in this place, as farther testimony in favor of Dr. Bourland, were additional evidence required, that it was not in view of the reward he assumed the arduous work he so triumphantly executed, and

that so far from its being a money-making business, it was the reverse. He, himself, states that after deducting the expenses necessary to be incurred on such an expedition, the remainder was far less than his practice would have yielded for the length of time he was absent. And we reflect on the dangers to which one must be unavoidably and certainly exposed on such an undertaking, the apprehension, namely, of a practiced villain, in a rude, wild, and almost uncivilized region of country, on a savage border, the inhabitants of which, for the most part, are abandoned scoundrels and refuges from justice, it cannot be supposed that a regard to the recompense of reward was the only incentive to prompt to such an enterprise. Hence it is but fair to suppose that a desire to promote the public peace and safety formed some part of the motive. Indeed had Dr. Bourland been convinced that another could have acted with as much efficiency in the case as himself, he would not have embarked in it. It was the opinion of all whom he consulted, that he was the most fit and proper person to undertake such a project. He had five brothers in Texas, one of whom lived near the place where Pennington had paused in his flight, besides other and numerous acquaintances. This fact, together with the remarkable traits of character that distinguish Dr. Bourland, his iron nerve, unflinching purpose, untiring energy, love of enterprise, and contempt of danger, pointed him out as the most eligible person to enter upon the task with any hopes of success. These are the circumstances that moved and prompted Dr. Bourland to do the duty, and free him from the imputation of mere mercenary considerations, and they reflect, at the same time, honor on the man. And the Doctor is correct when he says, that not one person in a hundred could arrest and bring back a fugitive from justice under similar circumstances.

We now come to Dr. Bourland's history, from which we extract the following account, clothed, however, in our own words, for brevity's sake. As before remarked, Dr. Bourland has, besides a numerous acquaintance, five brothers living near Red River. For some time he had felt desirous of visiting a country of which he had heard and read many marvelous stories, and wrote to his friends informing them of his determination to do so during the spring of 1846.

In the early part of January last, his brother, William H. Bourland, of Lamar county, Texas, visited Trigg county, State of Kentucky, to settle some business and passed on to Hopkins, to procure a horse belonging to his brother James, which Mr. Gourd had rode from Texas, some twelve months previous. In passing through Hopkinsville, he called on Mr. Coleman Boyd, one of our citizens, who is a friend and acquaiutance of William Bourland. While here he learned that one Simon Davis had been murdered, and that Alonzo Pennington was the reputed murderer—that a great excitement had existed in the community on the subject, and that Pennington had fled the country to avoid an arrest. He then informed Mr. Boyd that Pennington was, no doubt,

Good

in the county of Lamar, Texas, near Red River, as he had heard of an individual by that name, who shunned the society of all respectable persons, and mixed only with the doubtful and suspected class of residents.) By Mr. Boyd he was introduced to some of our most worthy citizens, to whom he imparted the same information. At the earnest entreaty of these individuals, he promised to adopt measures for the apprehension of Pennington, and even to undertake the matter himself. Hearing, however, that the bill for the annexation of Taxas had passed both Houses of Congress, and knowing that the legislature of Texas would be summoned to meet in consequence thereof, of which body he was a member, he immediately foresaw the impracticability of his promise, and determined to enlist his brother, Dr. Bourland, in the project. Accordingly, on his arrival at the residence of Dr. Bourland, in Ballard county, Kentucky, William acquainted him with the matter, and urged on him the propriety of the measure. Dr. Bourland, at first, conditionally assented to the proposition, but on more mature deliberation gave his absolute consent. The two brothers, William and the Doctor, concluded, and very wisely too, that a company of men from Christian would awaken suspicion, set on foot inquiry, and that Pennington would receive an intimation of the affair in time to change his residence, and baffle pursuit, and thus the project would fail of its object; and as it was generally expected in the neighborhood that Dr. Bourland would accompany his brother William back to Texas, there would be less grounds for suspicion on the part of Pennington, or his friends, should he engage in the undertaking. Pennington, it seems, kept a sharp look out, and was off at the least suspicious appearance, a guilty conscience inducing the belief or fear that his crime was pursuing him at every step, and that every person he met was commissioned to arrest and bring him back, to meet and endure that punishment from which he fled, and would, but could not escape. Dr. Bourland, for these reasons, determined to set about the duty forthwith, and promised to meet William, who was going to Tennessee, at Memphis. In case they did not come together at that place, he would proceed on down the river to Helena, and meet him at White River, Arkansas. In prosecution of this plan, Dr. Bourland left home on pretense of business engagements in the South, went to Columbus, where he was detained several days waiting for a boat, and finally took passage on the Governor Jones.

This steamer was heavily laden, and could not, therefore, run at night, which circumstance, together with his unavoidable detention at Columbus, caused him to miss the time, and to fail of meeting his brother at Memphis, as agreed upon. He proceeded to Helena, Arkansas, where on landing, his horse sustained an injury, which partially disabled the animal. Notwithstanding this inconvenience, Dr. Bourland started off about 10 o'clock from Helena, and by sunset had accomplished a distrnce of twenty-four miles. The next morning he contin-

ued his journey, and reached the Ferry, of White River, about sunset of the same day, a distance of forty miles from his resting place the previous night. Thus did he accomplish sixty miles, with a lame horse, and over bad roads within the space of a day and a half. Here he discovered that he was in advance of William, who, however, arrived at the Ferry early next morning.

The country between White and Arkansas rivers is represented as uninviting in appearance and character, and presenting no inducements to settlers, save at certain points, and these are desirable only as tavern stands.

Little Rock is represented as about the size of Hopkinsville, and no better built. Here the two brothers crossed the Arkansas, and entered immediately on a pine country. They met an individual, who from his acts and conduct, they thought was fleeing from justice, and two days after fell in with a company of men who were in pursuit of him. He was a murderer, the character they themselves were in search of, and had fled from Louisiana, but was overtaken near Little Rock and probably shared the fate of Pennington.

For a distance of more than two hundred miles they traversed a succession of gloomy pine hills, which presented no difficulties, and were destitute of everything like interest. Taverns were numerous, but infested with miserable crowds of suspicious looking persons, who lived in all probability by plunder, robbery and murder.

When within about sixty miles of Red River, Dr. Bourland and his brother separated, the Doctor taking what is there called the lower route. The upper route passed near Pennington's residence. This was done in anticipation that Pennington would keep a watch on the upper road to ascertain who, if any one, returned with William Bourland. On his arrival at home, William Bourland ascertained that Pennington had been seen by his brothers, to whom he related several stories, one to the effect that having become involved in some difficulty in Kentucky, he shot three men in self-defense, and left home until the excitement, consequent thereon should, in a measure subside. But the report that he, Pennington, had murdered Davis, having reached that place, Pennington immediately left the neighborhood and country.

James and William Bourland now left home to attend the meeting of the Legislature at Austin; so that the Doctor was deprived of their necessary and valuable co-operation. For a time he was at a loss how to proceed, as it was not known with certainty what course Pennington took. Persisting, however, in his inquiries, he at length learned that Pennington had gone to the Western part of Texas; but, as the story did not appear probable from some circumstances that accompanied it, Dr. Bourland declined to act on the information.

Shortly after this he met with a younger brother; from him he learned that Pennington and another individual had gone off together, and probably were in the Indian country. Taking with him his younger

brother, whom Pennington had not as yet seen, and one other individual, he started in that direction, sending his brother ahead to glean the information he could. They passed through the northern portion Fannin county, and came to the place where Pennington crossed over the Red River, into the Choctaw Nation. (Young Bourland met with a gentleman who informed him that he had slept in the same room with Pennington.) The gentleman, at whose house they slept, informed him the next morning, that the man with Pennington told him that was Alonzo. He said also that he was surprised Pennington did not make himself known as he had known him when he was a boy. Mr. Willis went to the river to see the informant over, and Pennington accompanied them, talking to Willis a good deal about old times, as he had now become known to Willis. This gentleman also informed that Mr. Willis was going to have a frolic that night, and that his companion, Thomas Williams, had been sent off for whiskey, to a place at some considerable distance.

We determined to make an effort to take Pennington forthwith and went some distance to a ferry, for fear of being seen should we attempt to swim the river. At the Ferry we met with a Mr. Wall, native of the Choctaw nation, whose assistance we secured. Wall conducted us to his house, where we made all the necessary arrangements. When we arrived near the place where the frolic was to come off, we learned that Pennington usually lay out in the woods during the day. It was therefore determined that Dr. Bourland should remain behind in the bushes until the others advanced to the house, and ascertained whether or no Pennington was there, pretending they were in search of Wall's negro, who had run away a day or two previous.

As they entered the house Mr. Willis called young Bourland by name, on hearing which Pennington arose from the table, where he was eating, and left the room. (Wall ran round and intercepted his way, while young Bourland and Capt. Yeary, who accompanied the two brothers from Fannin county, seized hold upon him, Pennington made a fruitless attempt to draw his pistol, but was overpowered and surrendered himself up.) Becoming somewhat impatient Dr. Bourland started to the house, and met a negro coming for him, Pennington greeted him cordially, expressed a willingness to return to Kentucky and said he had left home on account of the great and unjust excitement against him. (He said he dreaded the mob, and begged that Dr. Bourland would protect him from its violence.)

As Dr. Bourland was tying him, and spoke of starting immediately, Pennington professed to be sick and thought it imprudent to turn out at night. Dr. Bourland inquired into the character of his disease, and assured Pennington he would not endanger his health by night traveling. He then professed to be salivated and appealed to Dr. Bourland as a physician to say if it was not highly improper to expose himself under

name, on hearing which Pennington arose from the table, where he was eating, and left the room. Wall ran round and intercepted his way, while young Bourland and Capt. Yeary, who accompanied the two brothers from Fannin county, seized hold upon him, Pennington made a fruitless attempt to draw his pistol, but was overpowered and surrendered himself up. Becoming somewhat impatient Dr. Bourland started to the house, and met a negro coming for him, Pennington greeted him cordially, expressed a willingness to return to Kentucky, and said he had left home on account of the great and unjust excitement against him. He said he dreaded the mob, and begged that Dr. Bourland would protect him from its violence.

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In journeying thence they descried a party of men approaching them. When the two parties were within about two hundred yards of each other, the approaching company halted, some alighted and seemed to be making ready for a battle. Though uncertain as to their intentions, and fearing the worst, Dr. Bourland's company continued on their way, determined to act as the emergency of the case required. What then was the agreeable surprise and relief of Dr. Bourland and his party, on discovering that(his brother, John M. Bourland, the Sheriff of Lamar, headed the opposing and hostile company, and was coming to his assistance and comfort. Both parties then rode together, until about midnight, when they arrived at the house of Mr. Bourland. This was a tedious day, rendered so by the deep mud and continued rains.

At this place they tarried until 12 o'clock the ensuing day, during which time John Bourland completed his arrangements to accompany them as far as Shreveport. At Mr. James Bourland's they procured a (chain and lock) to render the prisoner more secure, thence they proceeded to some point near the county seat of Lamar, where the roads

forked,(one fork leading through Arkansas, the other to Shreveport)

For the first time since they took Pennington, he here manifested a considerable degree of anxiety, frequently interrogating Dr. Bourland as to what course he intended taking, evincing a decided preference, on his part, for the river route, and assigning as a reason, the precarious state of his health.

That he might not be subjected to inconveniences, interruptions or delays, it being of the first importance, to the success of the expedition, to exercise speed in clearing himself and Pennington from this section of country, Dr. Bourland held out the idea, both to Pennington and the community, that he would pass through Arkansas. He endeavored also to quiet Pennington, by informing him that the Raft was impassable, else he would prefer taking boat. Several persons admonished Dr. Bourland of the dangers attending both ways, and strenuously urged him to wait until some boat should pass the Raft. Pennington adverted frequently to the advantages offered by the river road, asserting that he had relations in and about Shreveport, and from thence down to the mouth of Red River; also that he had cousins, (proprietors of boats, who would make no charge for their passage down, and thus his expenses would be considerably diminished.) Dr. Bourland replied, to all this, that he usually went prepared to defray his traveling expenses, and valued time more than money. When about to mount their horses the next morning he informed Pennington that he had concluded to take the road to Shreveport. At this Pennington manifested much uneasiness, and pleaded as reasons, why he wished to go the river road, that his clothes, gun, &c., were at an uncle's, and that a man over Red River owed him seventy-five dollars, which he was desirous of obtaining, and complained severely of the duplicity and deceit practiced on him by Dr. Bourland. He was informed that all this was mere gammon, and that the individual that he said was indebted to him did not owe him a cent, for he had refused to purchase the horse and to have any dealing whatever with him, on account of the suspicions attached to his character. Dr. Bourland now procured the assistance of Mr. Barnett, and started for Shreveport. (They found the bottom of the Sulpher fork of Red river covered with water, and had to swim their horses repeatedly before they got to the main stream.)

During the fore part of the day Pennington was moody, silent and angry, but so soon as the difficulties of the road presented themselves he grew cheerful and communicative.

It was near dark when they reached the river. They called to a man on the opposite side of the stream, for assistance to cross, who informed them it was impossible to take the horses over that night, but if they would secure them until morning, he would bring them a skiff, in which the men might pass over in safety. This being the only alternative, Dr. Bourland proposed to the company to secure his and their horses in some dry place, while he was engaged in untying Pennington

and assisting him to alight. The moment Pennington found his feet at liberty he commenced striking his heels against the side of the horse, which sprang forward, and would have escaped, had not Dr. Bourland held firmly and tenaciously to the end of a long rein attached to the bridle bit. He succeeded in checking the animal, drew a pistol and was on the point of shooting Pennington, when he began to beg for his life, assuring Dr. Bourland that the horse became frightened, and commenced plunging of his own accord. In the scuffle Dr. Bourland received a severe blow, but whether from the foot of Pennington or the horse's hoof, he is unable to say. By this time the rest of the party returned, and assisted in dismounting Pennington, who appeared sick from mere excitement, and was much injured by the irons around his ancles. They then crossed the river and Pennington slept very soundly.

Early the next morning their horses were brought over, and they commenced their journey. During this day's ride they met numerous travelers, all of whom Pennington pretended to know. One person in particular he seemed to know, and the individual also recognized Pennington; for when they approached within about fifty yards, and he discovered the condition of Pennington, he exhibited a good deal of excitement and feeling, repeatedly halting and viewing the party closely. Pennington informed them who the person was, (his name, however, is forgotten) and was surprised that Dr. Bourland did not know him also, as the individual lived at Caledonia, a little below Metropolis. After passing this individual, they met a very genteel looking old man and a young one. Pennington spoke to them. When they had passed on to some distance, Pennington remarked that the two persons they had just met were from Christian, and thought it somewhat remarkable that they did not mention the crime with which he was charged as being the perpetrator. He said it was Squire Coleman and his son-in-law. Their guide informed Pennington that the old gentleman was a Mr. Brown, a near neighbor of his, and not Coleman; to which Pennington replied he was mistaken then.

There was a large crowd of persons at the house they stayed that night, some of whom had heard of the murder of Davis, and one who represented himself as a Kentuckian, informed Dr. Bourland that a short time previous to this, a murderer, who escaped from Mississippi, was rescued from his capturers on this very road, and advised him to keep a sharp lookout; to be particularly cautious as they passed through Harrison county, as it was noted for the crimes and villainy that had been perpetrated in it for two years past. The continued rains at this critical period of their journey, were of great assistance; for to protect the prisoner it was necessary to cover him over with a large blanket, which at the same time served to conceal his situation, so that they passed unmolested.

The night of this day was very cold and inclement, and it snowed incessantly. Owing to the great number of travelers, every vacant space at the tavern was occupied when the Doctor's party arrived, and it was exceedingly difficult to find a place where even the prisoner might rest. Room was finally made for him by the fire-place, and two of the company kept watch by turns. They experienced also considerable difficulty in crossing the water courses the next day, as they were swollen to a great highth by the late rains. This was in Louisiana, where they met some footmen going to Trinity river, but after they had arrived at Shreveport, and took boat to go down the river, the same persons came on board and said they were going back to Kentucky. Three took a deck passage, and one selected a stateroom near that of Dr. Bourland's.

Before they got to Shreveport the guide was sent ahead, to ascertain if a boat was up, and make preparations for their passage. The guide returned and brought information that a boat was there landing and would leave the next day. The party halted where they were, and remained until morning. They managed to reach the landing at the time appointed for sailing. All now dismounted but Pennington, who refused to do so, remarking that they had taken the wrong man, as he could prove by an individual in the crowd, which was dense. Dr. Bourland replied that it was very strange he should complain of this mistake here for the first time, after having traveled over three hundred miles, without so much as once urging it. That he was sure no man in the crowd was base enough to assert that the prisoner was not Alonzo Pennington; that he, Dr. Bourland, knew him to be the same; and that it was fruitless to resort to such vain expedients to get released as he was determined to take him back or die in the attempt to do so. He then ordered Pennington to dismount, and put him on board the steamer Yazoo in a comfortable and strong room. Pennington was very angry and rattled his chains a good deal, until Dr. Bourland threatened to confine him closely and immoveably. Pennington was allowed the length of his chain, and furnished with every comfort his situation would enable him to enjoy.

The following day, when Dr. Bourland had retired to his own room, adjoining the prisoner's, to take some rest, he heard Pennington at work on his chains. From a little crevice he could see Pennington without being observed himself. Pennington pulled off a hook, which was used for hanging up clothes, and endeavored to break off the chains therewith. When Dr. Bourland thought Pennington had exercised himself sufficiently at this game, he went to his room, and asked him what he was doing. Pennington denied he had made any effort to break his shackels, but the Doctor raised the mattrass up, and drew forth the hook Pennington had concealed beneath it, cautioning him at the same time, to desist from such attempts in future.

The trip down Red river was very tedious and disagreeable, em-

bracing five days; during which time they watched Pennington both night and day, as he continued his efforts to break off the irons from his person.

Shortly after the boat entered the Mississippi river, a severe storm arose, and consternation spread through every part. During the confusion that ensued from apprehensions that the boat would sink, the cries of affrighted women and children, the noise of the rushing winds, splashing of the angry waves, and running to and fro of the passengers and hands, hope beamed on the prisoner. He embraced the favorable occasion, and strove mightily to prize off the ceiling of the room. Being informed of this, Dr. Bourland hastened to the room, unlocket it, and found Pennington putting forth his whole strength to accomplish his purposes. Pennington's situation was a ludicrous one. (Putting two pillows doubled against the head-piece or planks of the birth, he placed his head against them and his feet against the ceiling, lying flat on his back; he thus converted himself into a sort of lever, and had well nigh succeeded in bursting off the ceiling, when Dr. Bourland arrived. Pennington denied that such was his design, and said he was only stretching himself.

On the first of March the boat arrived at New Orleans. Here Dr. Bourland called on Dr. Steele, and learning that no Cumberland river boat was in port, through the ageney of Dr. Steele, disposed of Pennington until an opportunity presented itself to ship for Canton. It required some management to conceal the prisoner, so as to avoid the service of a writ of habeas corpus, which was happily effected. They remained in New Orleans seven days.

Dr. Bourland thinking the news would reach Kentucky before he could possibly do so, and fearing that the friends of Pennington would make an effort to rescue him, deemed it advisable to conceal his real movements. For this purpose he engaged passage on the Old Hickory, intending, however, to sail on the James Dick, which would leave before the Old Hickory. (The news reached Hopkinsville that he would be up on the Old Hickory, and a company immediately went down to Canton to escort the prisoner up to the Christian jail.) Accordingly Dr. Bourland got Pennington on board the Dick at night, unknown except to a few persons.

During the passage up Pennington made some efforts to free his hands, which were all vain and fruitless. The day before the boat reached Canton, Pennington requested Dr. Bourland to deliver him into the hands of the lawful authorities; that he did not fear the result of a fair trial, as he would make it appear who the murderer was. He confessed that he had told Dr. Bourland many stories about different things, and could hardly expect to be believed by him; but that he had actually seen Cisney, who was murdered on Red river, about the first of February, and that Cisney had sworn falsely against him, and he could prove it. Subsequently he said he had no acquaintance with

either Davis or Cisney.

On the thirteenth of March the boat arrived at Canton, on the Cumberland river, when Dr. Bourland and the prisoner were received by the company that went from Christian. Pennington was guarded all that night by this company, and Dr. Bourland for the first time since he had captured Pennington, felt safe and easy. The next day the party started off for Hopkinsville, at which place they arrived about sunset. An immense crowd had assembled to witness the arrival.

Peunington was then committed by the proper authority to the jail, to await his trial at the ensuing term of the Circuit Court.

Dr. Bourland had traveled on this expedition thirty-two hundred miles, and was absent 54 days in all.

It will readily be conjectured that he encountered many and appalling difficulties and dangers. Indeed the nature of the business he undertook, the artful character of the individual he pursued, (the extensive association whose head and chief he had captured, the uncivilized country through which he traveled, the desperate inhabitants, composed of robbers, thieves, murderers, and fugitives from justice, rendered the project perilous in the extreme.) Nor can the reader fail to be impressed with the inexhaustible cunning and quick artifice exhibited on each and every occasion by Pennington, how vigilant to improve every occurrence to his own advantage, and how ingenious to create opportunities where an ordinary man would have desponded. The disposition he manifested in such early childhood cleaved to him to the last, so that at length it really seemed to be more natural to him to lie than to speak the truth: and, as will be seen in the end, he died with a lie on his lips.

The circumstances of his flight, arrest, and safe delivery to the jail of the county, all considered, render this one of the most remarkable instances on record, and we venture nothing when we say, that scarcely an individual in the country, with the exception of Dr. Bourland could have executed the work with one half the success.

We are not disposed to attribute such results unnecessarily to the interposition of Providence, but it does seem as if His hand was plainly to be seen in this case.

TRIAL.

JOHN McLARNING, Commonwealth's Attorney.

JAMES F. BUCKNER, for the Prisoner.

On the ——— day of March, the case of the Commonwealth of Kntucky vs. E. A. Pennington, charged with the murder of one Simon Davis, was called up by special appointment. The jailor was thereupon directed to bring the prisoner into court. A strong guard was summoned to the aid of the jailor, and shortly after, Pennington, accompanied by his wife, appeared at the bar. After a moment's consultation with his counsel, the prisoner signified his readiness to go into trial. The next step was the impanneling of the jury, which was affected in a shorter time than anticipated, as the accused speedily exhausted his number of peremptory challenges.

A sufficient number of jurors being listed, they were found to consist of the following individuals, namely: R. G. Henry, Elijah B. Richeson, James Perkins, William Dworett, O. C. Smith, Reuben Settle, G. W. Harvey, John J. Walker, Samuel Gresham, Robert Foard, H. Abernathy, Joseph A. Blewer, who were sworn according to the usual form. The clerk then delivered to the jury their charge.

The prisoner at the bar was now called on to hear and answer to the following indictment, which being read to him, the clerk as usual asked, "What say you, guilty or not guilty!" to which the prisoner replied, "Not guilty."

INDICTMENT.

Commonwealth of Kentucky,
Christian County and Circuit. } Set.

The jurors of the Grand Jury empanneled, sworn, and charged to inquire for the said Commonwealth and the body of the county aforesaid, at the term of Christian Circuit Court, held for the preparation and trial of chancery cases and criminals, and commenced on the second Monday in July, in the year one thousand (eight hundred and forty-five,) on their oath present that Edward Alonzo Pennington, (commonly called Alonzo Pennington) late of said county and circuit, laborer, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-five, with force and arms, at the circuit aforesaid, in the county aforesaid, in and upon one Simon Davis, in the peace of the Commonwealth, then and there being, feloneously, willfully, and of his malice aforethought, did make an assault; and that the said Edward Alonzo Pennington, (commonly called Alonzo Pennington) with a certain hickory stick, in his right hand, then and there held, in and upon the head of the said Simon Davis, then and there feloniously, willfully, and of his malice aforethought, did strike the said Simon Davis three several mortal blows, and with both his hands, the said Edward Alonzo Pennington, (commonly called Alonzo Pennington) then and there feloniously, willfully and of his malice aforethought, (did mortally beat, and cast, and throw the said Simon Davis into a deep pit and cavern under ground, of the depth of eighteen feet, on the said ninth day of May, in the year aforesaid—the said Simon Davis, at the circuit aforesaid, in the county aforesaid, of the said mortal blows, beating, and being cast and thrown into the said deep pit and cavern, died.)

And the jurors aforasaid, upon their oath aforesaid, do further present, (that Benjamin F. Cisney, late of the said county, laborer, on the day and year aforesaid, with force and arms, at the circuit aforesaid, feloniously was present, aiding, abetting, and assisting the said Edward Alonzo Pennington, (commonly called Alonzo Pennington) the striking of the said several blows, and beating, and casting, and throwing into the said pit and cavern under ground, of him, the said Simon Davis to do and commit.)

And so the jurors aforesaid, upon their oath aforesaid, do say that the said Edward Alonzo Pennington, commonly called Alonzo Pennington) and Benjamin F. Cisney, the said Simon Davis, in manner and form aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder, contrary to the statute in such cases made and provided, and against the peace and dignity of the Commonwealth of Kentucky.

Information given by Thos. Pyle, James N. Spurlin, W. S. Compton, George W. Bradley, Phelps Gregory, D.D. Myers, John W. Grissam, E. M. Robinson, Wiley Robinson, Benjamin Harrison, Rice Dulin, James Robinson, Harman West, D. S. Hays, Geo. Myers, Isaac Henderson, C. Meacham, Thomas Jones, S. J. Hawkins, and W. H. Sassern.

John McLarning, attorney for the Commonwealth.

Zazhariah Glass, foreman of the Grand Jury.

The above indictment was found (the 26th July, eighteen hundred and forty-five.) The court house was crowded with an immense multitude, eager to witness the trial, which was not sensibly diminished throughout the three days it occupied. Numbers also lined the way from the court house to the jail, to catch a sight of the prisoner as he passed.

As before stated, the accused pleaded not guilty, and the trial commenced by the introduction of Winn S. Compton, on the part of the Commonwealth.

Witness being sworn, was interrogated, and answered in substance as follows:

Question. Were you acquainted with Simon Davis? Answer. I was. Q. Were you at the cave when the body was taken out? A. I was. Q. Was the body that of Davis? A. I have no doubt of it. [A cravat and some other articles of clothing were produced.] Q Did these belong to Davis? A. The cravat I took from the body. Davis had his washing done at my house. Witness was then asked to describe the cave and when the body was found. A. The cave is 15 miles north of Hopkinsville, between the Greenville and Elkton roads, and about one quarter of a mile from the public road. A small path leads to it. The body was found on Saturday; I was at the cave on Sunday. It is a perpendicular hole 15 or 20 feet deep. Q. When were you at the cave? A. In July. Q. State what you know about the body, its situation, appearance, &c., when taken out. A. The cave is narrow at the top, but widens as it deepens. At the distance of 12 or 14 feet is a kind of platform of rock, from which several apartments lead off in different ways. On this platform the body lodged. There were signs of violence on one side of the skull; I think the right side was broken out. Q. You think the body was that of Davis? A. From what I saw of it and the clothes, I have no doubt of it. (I made for him the shoes which he had on.) Q. How far did Davis live from you? A. About one and a half miles. Q. How far is the cave from your house and Davis's? A. About the same from each, 15 miles Q. When and where was the Battallion muster? A. On the 9th of May at Pleasant Hill meeting house. Q. How far is the muster ground from the

cave? A. Six or seven miles. Q. State if you were at muster that da and if so, whether you saw Davis and Pennington there. A. I co manded a company on that day; saw Davis there; called the names both; both answered; but I did not see them together on that day. T witness, in answer to various other interrogatories, stated as follow There were suspicions that Davis had been murdered some time befo the body was found. He missed Davis after the muster, and went Davis's house on several occasions, but saw nothing of him. Dav lived alone. On Tuesday week after the muster he went to Pennin ton's to make some inquiries about Davis; asked Pennington when last saw Davis. After some hesitation, Pennington replied that he sa him last on the day of Burn's exhibition. Pennington said furthe that Davis was at that time near Clarksville at work, and would home in two weeks. Witness then inquired of Pennington, if he ha bought Davis's property, to which Pennington replied that he had, an turning to his wife, asked her if any one had been to Davis's place feed the stock. Q. When and where was Burns's exhibition? A. Th Wednesday after the muster, on the Butler road, seven miles east Hopkinsville, about one and a half miles from Pennington's, not so fa from Davis's.) Q. How long after the disappearance of Davis, befor Pennington took the property away? A. I do not know. The prop erty was not all taken away at one time. I saw some ploughs, hoe gear and axe, and other articles that belonged to Davis, at Pennington's Witness also stated that Pennington turned his stock into Davis's oa field, and that he saw Pennington's overseer and negroes at Davis' place. Q. Were you at the exhibition? A. I was, but did not se Davis there. Had he been there I should have seen him. Q. Di Pennington say he saw Davis there? A. He did. Q. Who usuall went with Davis to the muster?. A. Davis and myself usually wen and returned together on the same day. When I left on this occasio Davis was not ready to return. Q. Did you ever see Davis after th muster? A. Never, until his body was found in the cave.

Cross examination by defendant- Q. Were you at Davis's on the exhibition day? A. I was there on the evening of that day. Am not positive whether it was Wednesday or Thursday, but think it was Wednesday. Q. Did you miss any of the property at that time? A. Not at that time, nor until after my interview with Pennington. Q. What season was this? A. (Spring. Hogs were running out.) Q. Did Pennington say he saw Davis on the day of the exhibition? A. I think Pennington said positively he saw him on that day. To appropriate questions put by the defendant's counsel, the witness responded in substance as follows: That he is a relative of Davis's wife, who died in the latter part of April, and that he lived on a piece of land belonging to her. That he was told some of the property that Davis got by his wife was removed before the muster, but does not know it. That Davis was endeavoring to sell his property, crop, &c., with a view of leaving the country, and said he would go to Illinois if he could

sell—was dissatisfied with this country, and thought he could make more at his trade. Q. Was there not a great crowd at the exhibition? A. There was—some three or four hundred persons. Q. Can you say Davis was not there? A. I cannot say positively he was not, only I did not see him, but think I should have seen him if he had been there, as I was door-keeper part of the time. Q. Did you never see a cravat like this in eourt? A. I do not recollect to have seen any like it. Q. Did you ever see jeans like this? A. I have. Q. Do you know this to be Davis's hat? A. I know the hat as well as the other articles to be his. Q. And you never saw a cravat like this before? A. I may have seen some, but do not recollect any.

Examination in chief resnmed. Q. How much did Davis ask for his crop? A. Three dollars per acre. Q. After what had occurred did you see Pennington's hands at Davis's place? A. (Yes, I saw them after these events working the crop.) Pennington offered to sell me the corn. Q. Did you often see Pennington? A. Not often. Q. When did you see Pennington after suspicion was aroused that Davis was murdered? A. Not until the time before mentioned. I went to see him several times but did not do so. Q. Where was the hat found? A. Near the cave. The body found in the cave you know to be Davis's? A. I am satisfied it was.

Cross examined by defendant. Q. When was the body found? A. About the (11th or 12th of July.) Q Do you know that Pennington was in the neighborhood up to that time? A. I do not. I was informed that Pennington was at my house the Sunday before. Q. Were you at a meeting held at Antioch? A. I was at a meeting held there when resolutions were passed for forming a Safety society. Was not the object of that meeting to take and punish Pennington? A. I do not know. Q. Was there not an armed guard on the ground? A. There was. Q Do you know that threats were made directly against Pennington? A. I do not. (The most that was done consisted in arrangements to catch Pennington.) Q Did you not hear it said they would hang Pennington without a trial? A. I did not.

Examination in chief resumed. Q. When was this meeting? A. The day before the body was found. Q The object of the meeting was to provide for catching Pennington, you say. Was it because he was thought to be the murderer? A. He was supposed to be the murderer. Q Did you see Pennington after this? A. Not until I saw him in court. Q What was said about Pennington? A. It was said he ought to be punished; that he ought to be hung over the cave without judge or jury. This was said by individuals, and not by society.

David D. Myers, sworn on the part of the Commonwealth. Were you or not at the cave when the body of Davis was found? If so, state the circumstances. A. I was present when Davis's body was found, on or about the 11th of July, 1845. You might see the outlinas

of the body from the top after looking awhile. I went down and e amined the cave. (It is about eight feet at the top, about thirty feet the bottom, from north to south; not so wide east and west.) Q. D you know the purse that belonged to Davis? A. Yes. Mr. Robins found a purse near the cave, which was the same that I saw in Davis hands. Q. How do you know it? A. It was a very peculiar purse pocket-book. I noticed it particularly when Davis paid me a must fine a day or two before the muster. It was made of cloth, with string at both ends. Q. How much, or did he appear to have muc money?. A. I saw some seven or eight dollars in silver and a roll paper money. Q. When was this? A. It was the 7th of May, think—before the muster.

E. M. Robinson, sworn on the part of the Commonwealth. Q Did you find this purse, or pocket-book? If so, when and where? A I found this pocket-book about fifteen feet from the cave on the sam day, and only a few minutes before the body was found. Q. Was the anything in it? A. I did not examine it. It was open. I saw no si ver in it. There was no string to it.

David D. Myers recalled. Q. Was there anything in the pocke book when you saw it at the cave? Nothing when I saw it. Harma West handed it to me.

Wiley Robinson, sworn on the part of the Commonwealth. Q were you at the cave when the body was found? If so, state all yo know A. I was the first to enter the cave. The body was part covered with leaves and small sticks. The skull was broken an a piece of it out. Q. Did the leaves and sticks look as if placed there or had only fallen in? A. It seemed as if they were thrown in to con ceal the body. Possibly they may have fallen in. Q. Dessribe the situ ation of the cave? A. (It is on nigh ground, near the road that lead from White Plains, and has bushes around it. It widens at the distanc of four or five feet from the top.)

Philip Gregory, sworn. Q. Were you at the cave when the bod was found? A. I was there the day the body was taken out. Q Was it the body of Davis? A. I do not know it to be his body. Q Did you see property of Davis' at Pennington's? A. I saw propert there which Mrs. Pennington surrended as his property. Q. Whe did you see Pennington last? A. A few days before the body wa found.

Cross examined. Q. Is not your shop on the public road? A. It is. Q. Did not Pennington pass your shop the day after the muster? A. He did, and stopped for awhile. Q. Did not Mrs. Penningto deny the property spoken of above was Davis'? A. I did not hea her deny it, but she appeared unwilling to give it up at first.

John Kelly, sworn in chief. Q. Did you know Davis? If so, state when you saw him last. A. I knew him, and saw him and Pennington together several times on Thursday before the muster. Q.

Did Davis have any money?. A. He did. (Davis dined with me the day before the muster at my house. I saw him in possession of several bills and some silver.) Q. Did he remain in town that night? A. I invited him to stay, but he said he could not; he must be at muster; that he had paid one fine, and did not wish to pay another. Q. Did Pennington and Davis leave town in company? A. I think they did. I heard them say they wished to do so.

"fine for not muster"

Cross examined. Q. What time of day was it when you saw them together? A. I think it was between 10 and 11 o'clock. Q. Did you see them leave town together? No, I only heard them say they wished to do so. Davis said he would go with Pennington, as Pennington was the best friend he had in town, since one of the Grays had left.

D. D. Myers, recalled. Q. Is this pocket-book the same you saw Davis have? A. It is. Q. Are you positive? A. I am.

E. M. Robinson, recalled. Q. Is this the same purse you found at or near the cave? A. It is. Mr. Robinson then opened the pocket-book as it was when he found it.

Thomas J. Edwards, sworn. Q. Were you at Batallion muster? A. I was; it was at Pleasant Hill, about the 9th of May. Q. Did you know Davis? A. I did not. I saw Pennington with a stranger, who had on a hat like the one in Court. Q. What time was this? A. In the evening, about an hour and a half by sun. Q. Did you see them start? A. I did not. Q. Where were they? A. In the woods. Pennington had a bottle of liquor, and called me to drink as I passed. I went up to them. Q. Who was with them? A. (Cisney, McFadden, Pennington, and the stranger were in company.) Q. Were they all together? A. Pennington and the stranger were a little apart from the two others, and were talking in a low voice.

Cross examined. Q. Did you never see other hats like this? A. I have. Q. Is this the hat the stranger had on? A. I can't say it was. Q Were you not tight? A. I was not, but had taken too or three drams. Q. What kind of a place were they in—a secret place? A. It was inclined to be secret. Q Did you not see others near? A. I saw only the four mentioned, and left them there.

Emsley Henderson, sworn. Q. Were you at muster? A. I was. Q Were you acquainted with Pennington and Davis? A. I was. Q. Were they at muster? A. I saw both there. Q. Did you see them leave together? A. I did. They started (about an hour by sun.) They went in the direction of Samuel Johnson's. Q. Where is Pleasant Hill? A. (North-east from Hopkinsville.) Q. Did Pennington and Davis start from the muster ground? A. (They started from the spring, south-east of the meeting house.) Q. Was the direction they took Pennington's proper course to go home? A. His proper course was the opposite to that he took. Q. Were you at the cave when the body was found? A.

I was there when the body was taken out, and helped to take it out. Q. How far is the cave from the meeting house? A. About five miles. Q. Was the course Pennington took the direct course to the cave? A. It was. Q. What kind of clothes had Davis on? A. I did not notice his clothes. Q. Was this the hat Davis had on? A. That or one like it. Q. Is it a public way to the cave? A. No, it is private. I saw Pennington get a bottle of liquor before starting.

Cross examined. At what time did you see Davis and Pennington leave? A. About an hour by sun. Q. Were you not drunk? A. I was about tight as usual, but in a condition to be at myself.) Q. How many drinks did you take that day? A. I did not mark down the number. Q. What kind of clothes had Davis on? A. I did not notice his clothes. Q. Did you see Pennington and Davis leave? A. I saw them leave the spring together, and go to their horses. Q. Did not you see anyone else with them? A. I saw no one but Davis and Pennington go that way. Q. Did not Pennington have a gun? A. I did not see it. Q. Is there not undergrowth between the spring and the church that prevents the sight? A. You can see from the spring to the church. Q. What kind of hat did Pennington have on? A. I think it was a black fur hat.

Examination in chief resumed. Q. How are the muster ground and spring situated with respect to each other? A The muster ground is to the right of the spring. Q. Did you see Davis and Pennington leave together? A. I did. The report of Davis' murder recalled these facts to my mind. Q. What was Davis' condition? He seemed drunk. Q. Is this the hat you saw on a bush at the cave? A. The same, or like it.

Cross examined, Q. Did you not get into some difficulties on that day? A. I do not recollect that I did on that day.

Wiley Robinson, recalled. Q. Is this the hat you saw at the cave? A. It is like it.

Cross examined. What time was it when you got to the muster ground? A. It was late, about half an hour by sun. Q. Was not Elmsley Henderson drunk? A. (He was lively, not very drunk?)

Examined in chief. Q. Was not Henderson sober enough to know and recognize his acquaintances? A. He was. Q. Would you or not believe him on oath? A. I would.

James Vaughan sworn. Q. Did you ever hear Pennington say anything about where Davis was? if so, state all about it. A. (After the report of Davis' murder, I heard Pennington say Davis was in Illinois. (Pennington came to my house on Sunday evening, introduced the subject, and said he had been in the neighborhood hunting news; that he heard Davis had been killed, but it was not so, for Davis was in Illinois doing well.) I told Pennington if it was me I would bring Davis back if he was in the back part of Georgia, and clear up the matter, rather than have such suspicions hanging over me.

He said he did not want Davis to come back until after big Court. Q. When did you hear that the body was found? A. Next Saturday; Compton sent me word the body was found.

Cross examined. Q. Did Pennington say he saw Davis in Illinois? A. He did not say that he saw Davis, only that Davis was in Illinois, doing well. Q. Did not Davis tell you he was dissatisfied here, and would not stay? A. He did, and tried to sell me some of his property. I went to Davis' house, looked at various things, and told Davis if he would bring them up, I would give him three cents per pound. Davis did so, and I paid the money. Q. When did you see Davis last? A. I have not seen him since. Q. Pennington said he did not wish Davis to come back? A. He said he did not wish him to come back till after Court. Q. Did not Pennington say he did not wish to go after Davis till after Court? A. He might have said so, but I do not think he did.

Daniel H. Harrison, (brother-in-law of Pennington,) sworn. Q. What did Pennington tell you about Davis? A. He told me that (Davis was somewhere on the river, below Pabucah; that he had seen him; that he was at work on a steam-mill.)

Cross examined. Q. Did Pennington say he had seen Davis? A. He said he had seen him a short time previous to our conversation. Q. May you not be mistaken as to his saying he had seen Davis? A. I think I am not, for my mind was very much interested about the matter. Q. When was this conversation? A. Soon after July Court, where I first heard of the report that Davis was murdered.

Alfred Younglove, sworn. Q. Are you acquainted with Davis? A. Slightly. Q. Was Davis at muster? A. I saw him there, and he proposed to sell me his hogs.

Cross examined. Q. Did you see Henderson at the muster? A. I do not recollect seeing him.

Richard Vaughan, sworn. Q. Did you ever hear Pennington say anything about where Davis was? A. I met Pennington on the road about one mile from Edward's, after I had heard of Davis' murder. (Pennington told me Davis was near Clarksville. Pennington told me also that Bradley gave him twenty dollars for his bargain in the negro girl he bought of Davis.)

Cross examined. Q. Did you ask Pennington where Davis was? A. I don't think I did. Pennington spoke of it himself. Q. Do you recollect this from hearing others speak of it, or of yourself? A. Of myself.

Richard Bradley, sworn. Q. Did you see Pennington and Davis in town before the muster? A. Yes, about a week before. Q. Did they leave together? A. They did. On the cross examination Mr. Bradley stated that he went out of town with Pennington and Davis as far as the widow Pyle's. Witness was in the clerk's office when Davis

came in. After he went out, Davis called to him, and asked him to buy the negro girl. Witness agreed to give him one hundred and fifty dollars if the girl was sound. He asked three hundred dollars for all his property. Davis asked witness if he would go and get the negro; that it was likely she was at James Barnett's, who took her to his house. Mr. Bradley replied he would buy her anyhow, if Davis could prove that Barnett took her away. He then went to get his horse. When he returned Pennington and Davis were sitting on a box at Lussun's. Davis and Pennington then went for their horses. Davis came to witness as he was waiting, and said he must not tell Pennington he had bought the girl, and that Pennington would take all his property. Mr. Bradley then asked Pennington if he had bought the negro. Pennington said he had bought her only because she was cheap, but he did not want her, and that witness might have the bargain for twenty dollars that he would give three hundred dollars for all the property, and witness might the girl for one hundred and fifty dollars. The next day witness paid Davis seventy-five dollars in money, and executed his note to Davis for twenty-two dollars and fifty cents, and undertook to pay debts for Davis to the amount of the balance. Q. Was Pennington present when this occurred? A. He was not. What is the date of the bill of sale? A. May the 2d. Q. Did you hear Davis tell Pennington to come and take the property? A. Don't recollect that I did. Q. Was it in Pennington's presence that you agreed to pay certain debts for Davis? A. I do not think it was. It was the next day after I saw them togather.

Examination in chief. Q. Was it in Pennington's presence you agreed to give one hundred and fifty dollars for the girl? A. Yes, Pennington was present.

Cross examination. Q. Did you say in Pennington's presence that you would give one hundred and fifty dollars in money? A. No, I said I would give seventy-five dollars in money, and my note at six months for seventy-five dollars, in Pennington's presence.

Zach Glass, sworn. Q. When you spoke with Pennington at the jail, after he was brought, what did he say? A. Pennington said he saw Davis at muster; that he was to have gone home with McFadden and Pepper, but they left first, and he did not overtake them, and that he left alone. He also said he was innocent.

Cross examined. Q. Did Pennington say he did not recollect of conversing with Davis at the muster? A. I cannot say he did.

Joseph McFaddin, sworn. Q. Were you at Battalion muster on the 9th of May? If so, did you see Pennington there? A. I was, and saw Pennington there. Q. Did Pennington come to your mother's that night? A. He did. Q. What time of the night was it? A. I think it was about 9 o'clock. I was sick, went to bed early, about an hour by sun, and had been asleep. I can't say positively as to the hour Pennington came. Q. Did you see him that night? A. Pennington slept

with me, but I can't say I saw him that night. I was asleep when Pennington came.

Cross examined. Q. You say Pennington slept with you—how it is you did not see him that night? A. Pennington did not bring a candle up with him. Q. How did you know Pennington had arrived? A. I did not know it until he came to the foot of the stairs and called me. Q. Had you not swapped horses with Pennington at the muster? A. Yes. Q. Did not the horse have the big head, and was he not to come to your mother's for some oil of spike? A. I swapped him a horse with the big head, and told him I could let him have some oil of spike. Q. Was he not to come for it that night? A. No time was mentioned for him to come.

Examination in chief resumed. Q. Did Pennington say he would come that night? A. He talked of doing so, and when I left I asked him to go with me, but he said he could not that night.

Cross examined. Q. Did not Pennington say if you would wait he would go with you? A. He did not. Q. Did not Pennington say he would go so soon as he saw a certain person? A. I do not recollect that he did.

Examined in chief. Q. How far is the muster ground from your house? A. About six miles. Q. Were you at the cave when the body was taken out? A. I was. Q. Is your house on the way from the cave to Pennington's? A Not much out of the way.

Cross examination. Q. How far is the cave from your house? A About six miles. Q What kind of a road is it from the cave to your house? A A bad road.

Langley Bell, sworn. Q. Did you ever go to Pennington's house, if so, state for what. A I went to Pennington's house to see about an account I had against Davis. I asked Pennington where Davis was, to which he replied, not far off; that Davis was keeping out of the sheriff's way, and had been badly treated by his wife's relations. Pennington agreed to settle the account. Q Had you heard before this of the suspicions against Pennington? A I had.

Cross examined. Q. Did Pennington and Davis come to your shop on a certain occasion? If so, state what took place. A. Davis and Pennington came together to my shop. Davis wanted indulgence. Pennington said he was about to buy Davis' property, and would arrange the matter if I would take replevied executions. I agreed, and Pennington said well, we will see.

Examined in chief, Q What did Pennington say, when you went to his house? A. He told me not to be uneasy; that I should be paid in a short time. He asked me if I would take a note on Bradley for twenty dollars, and another on Compton. I replied I would. He said he would bring them in a few days to me. Q Was the note on Bradley for less than twenty dollars? A It was not.

Cross examined. Q Did not Pennington say it was a claim on Bradley? A He did not say claim, but note. Q Was it over twenty-two dollars? A I do not think it was; it was not under twenty dollars.

R. Bradley, recalled. Q Did you ever give more than one note to Davis? A Never but one, and that was for twenty-two dollars and seventeen cents, at least that is what I paid Pyle for Davis. Q Did you ever give a note of this amount to Pennington? A I gave no note to Pennington.

Mrs. McFadden, sworn. Was Pennington at your house on the night of the muster? A He was. Q What time was it? A About two hours in the night. Q Was anyone with him? A No one. Q Had the family gone to bed? A Part of the family had. Q Did Pennington look excited? A He looked as usual.

Cross examined. Q What time was it when Pennington arrived at your house? A Mr. Cooper had just returned, eat his supper, and gone to bed. The family had done eating, and the things were on the table. Q Was it not the usual supper time? A Supper was later than usual, not much, however. Q Had you not sent word to Pennington to come and see you that day? A I sent word to that effect, but do not recollect it was on the day of the muster I sent the word.

Mrs. Cooper, sworn. Q At what time did Pennington get to Mrs. McFaddin's, the night of the muster? A. About two hours in the night.

Cross examined. Q Did not Mrs. McFaddin send for him that day? A I do not know that she did on that day.

Davis Compton, sworn. Q Did you ever hold any conversation with Pennington about Davis? If so, state the circumstances. A About Friday week before the body was found, I was ploughing in the field on the road. Pennington rode up to the fence, and asked me if I had heard the tales about his killing Davis. I told him I had. Pennington then said he had seen Davis, and would insure him to be sound and well; that Davis was building a chimney for some man at a little place below Clarksville.

Cross examined. Q Did Pennington call to you, or you to him? A Pennington rode up to the fence and called me by name. Q Did he say he had seen Davis? A He said he had been where Davis was.

Rice Dulin. [A letter was offered in evidence on the part of the Commonwealth, which, after being considered on by the Court, was finally rejected] Q Were you at the cave when the body of Davis was found? Mr. Dulin replied that he was. and stated the same that has already been given on this point. This witness stated that he was at Pennington's the Wednesday before the body was found, and that he did not see Pennington after until he saw him at Canton. Q Did you have any conversation with Pennington then? If so, state what he said.

A I did. Pennington said he was on his way home, from below and stopped at Mr. Gordon's. Gordon informed him that the body of Davis had been found. He immediately rode on, crossed the river on the bridge at Hopkinsville, and when he arrived at home discovered there were persons there; that he dismounted at the gate, stood by his horse and listened to the conversation, then left. He met McEdson the next day, and crossed the Mississippi at island number one. That he was taken in the Indian country, on the direct route to California.

Cross examined. Q. Do you remember what Pennington said he went below for? A I do not. Q Was not Pennington in irons when landed at Canton? A He was. Q Did not Pennington say, in this conversation at Canton, that he told Gordon that he would go up and see about the reports? A I do not recollect that he did. Q Did not Pennington say that he could have easily shaken off his handcuffs and escaped, had he wished to do so? A He did not. Q What kind of roads are they about White Plains? A Very rough—it is a rough country. Q. How is the road from Mrs. McFaddin's to the cave? A. Very rough. Q At the meeting house do not roads lead off in diffenent directions? A Yes. Q Is there not a field on the left, as you go from the spring to the church?? A There is.

Examination in chief resumed. Q Was not Pennington raised in the neighborhood of the cave? A Mrs. McFadden's farm formerly belonged to Pennington's father. Q. Where does Pennington's family live? A Near the Elkton road. Q How far is Mrs. McFaddin's from Hopkinsville? A Seventeen or eighteen miles.

Cross examined. Q Has Pennington lived in that neighborhood for some time? A Not for some years.

Examined in chief. Q Did you not hear of Pennington's being in the neighborhood frequently? A Yes, I have heard of it.

Langley Bell, recalled. Q By defendant. Where was it Pennington proposed to give you Bradley's and Compton's notes? A At Pennington's house.

George Bradley, sworn. Q. Did you know Davis? A I did. Q. Was Davis at muster? A I saw him there, but did not see him and Pennington together. Q Do you not live near Davis? A I do. Q You frequently saw Davis? A Yes. Q Do you know that Davis sold his property to Pennington? A I know he sold one horse to him. Q Was not the stock at Davis' on the muster day? A I saw a colt and calf there on tnat day. At muster, Davis asked me to feed the colt for him. Q Do you know when the property was taken away? A I do not, it was there after the disappearance of Davis. Q You say Davis asked you to feed the colt—did he tell you he would not be at home that night? A Yes, he said he would come home the next day, Saturday,

Cross examined. Q Did Davis say he was not going home th night? A He said he could not go home. Q Did you see Penningto at muster? A Yes. Q What kind of a hat did he wear? A I think was a black fur hat. Q What time did you leave? Q. About two hou by sun.

Examined in chief. Q Did Davis say why he could not go home Q He said Pennington was to pay him some money, and that he w going with him to old man Pennington's to get it, and could not g home. Q. Did you ever see Davis after? A Never, unless it w Davis I saw at the cave.

Franklin Webb, sworn. Q. Did you know Davis? A Yes, I w acquainted with him and bought corn of him. Q. Did you ever s Pennington at Davis'? A When I went for the corn I saw Pennin ton there. Q When was this? A In May. Q Did you ever he Davis say anything about leaving the country? A Yes, I heard hi say he was going to leave. Q. Did you ever go there again wh Davis was at home? A I went there twice, but did not see Davis. saw stock in the lot.

Cross examined. Q. When did you see Davis last? A. It was b fore muster. Q. By the commonwealth. When was it that you g the corn? A. Two or three weeks after the death of Davis' wife.

W. S. Compton, recalled. Q. When did Davis' wife die? About the 25th or 26th of April. Q. Had Davis sold his property b fore the muster. A. He was trying to sell it up to the day of the mu ter. Q. By a juror. You say you asked Pennington when he last sa Davis—what was his reply? A. I asked Pennington when he sa Davis, and he said at the exhibition; that Davis had gone to the neig borhood of Clarksville. I think he said he saw Davis the day of t exhibition.

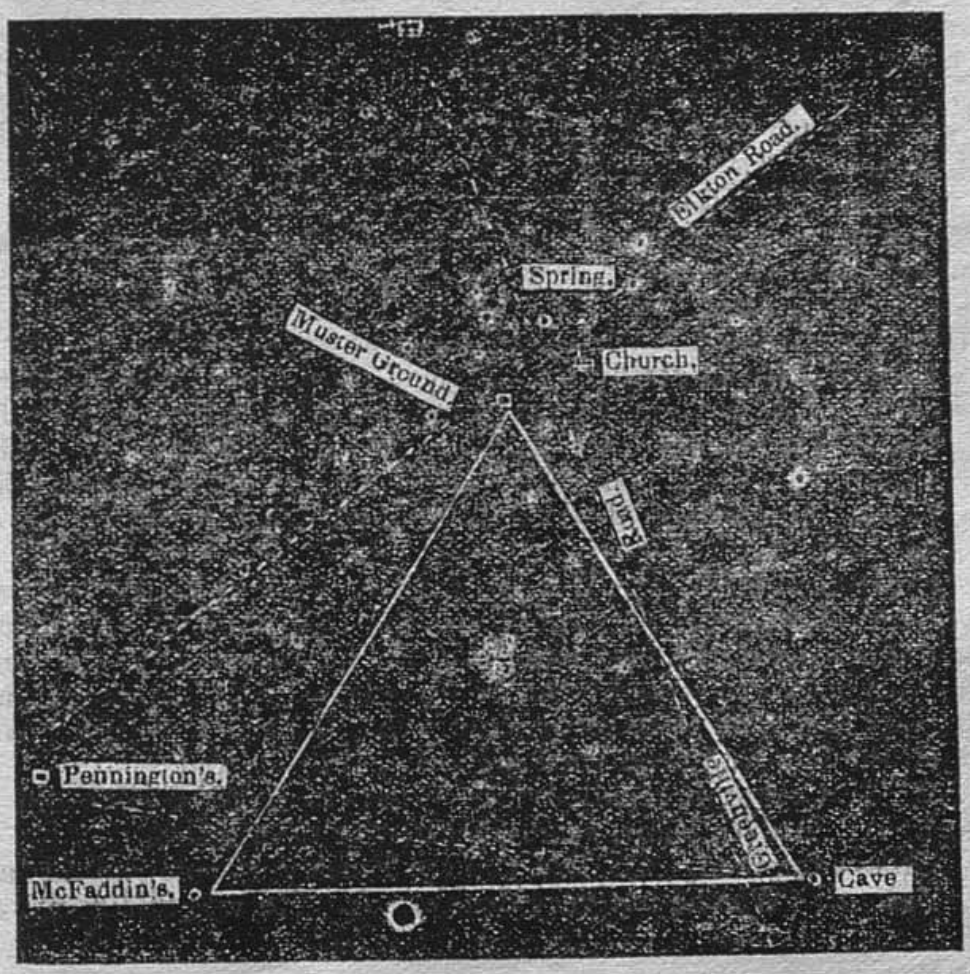
Cross examined. Q. You saw Davis' colt at Pennington's? Yes. Q. Were there not a great many other things on the oat fie at Davis? A. After the body was found the fence was thrown dow and everybody's stock went in.

Examined by Commonwealth. Q. When was it Pennington sa he saw Davis at the exhibition. A. About the 15th of May, afte muster. Pennington said he saw him on the day of the exhibition, n at the exhibition.

On the cross examination of Rice Dulin, the following evidenc was omitted by mistake. Q. Did not Pennington say he was afraid o the people? A. No. He said he had a copy of the Governor's proc lamation in his hat, showed the description to several persons, acknowl edged that he was the man, and offered to come back with any perso who would share the reward with him. Q. Did not Penning on sa that he had written to a lawyer in Hopins to defend him? A. No Pennington said he was glad to get back and was not afraid of a fai

trial. Q. Did he not say at Canton he left through fear of Robinson's court? A. Robinson's court was not spoken of.

D. S. Hays sworn. Q. State whether the conversation with Pennington at Canton was or not voluntary, and what he said? A. It was voluntary. Pennington sat for half an hour before he commenced talking freely. After speaking of Texas, I asked him where he had been below when he had heard of the apprehension of Cisney and the finding of the body of Davis. He said he had been to the iron works, and stopped at Gordon's, where he learned what had occurred. That he then went on home, discovered men there, took a fresh horse, crossed the Mississippi at island number one on the 22d of July, went to Missouri, and there saw Cooper. Q. Was any attempt made to take Pennington before the body was found? A. Not before—after the body was found Pennington was looked for. Q. Where did Pennington say that he was taken? A. Near the Cross Timbers, fifty or sixty miles from the Rocky mountains. He said that he had gone farther west than the place he first stopped at in his flight, in the Indian country, beyond where counties are organized.



Cross examined. Q. Did not Pennington say he was taken near the Wachitta? A. I have no recollection of it, but remember he said fifty or sixty miles from the Rocky Mountains, at Cross Timbers, where he had gone to make a race.

Rice Dulin, recalled. The witness drew the above figure to point out the relative situation of the cave, muster ground, Mrs. McFaddins, Pennington's house and Hopkinsville.

From the cave to Mrs. McFaddin's plain road, about six miles—From McFaddin's to muster ground about six miles, and from muster ground to cave about six miles. A path from McFaddins to Pennington's brother-in-law runs near the cave. Q. Was not Pennington raised in this neighborhood? A. He was raised at Mrs. McFaddin's place, and often went to that place to his brother-in-law's. Q. Did Pennington say he was taken above or below Cross Timbers? A. I am not positive whether he ssid above or below, it was about 55 from the highlands, or rise of the Rocky Mountains. (Some one of the company asked Pennington how far from this place; he smiled and said nearly out of the world.)

Cross examined. Q. Did not Pennington state that he was taken near Wachitta. A. He did not. Q. Did he say he saw many persons he knew? A. Yes. Q. Did he say he rode with Dr. Bourland? A. No. Q. Did he say he voted? A. Yes. Q. Did he not say he could have shaken off the hand-cuffs? A. He said nothing about hand-cuffs.

James H. Sperlin sworn. Q. Were you acquainted with Davis? A. I was. Q. Did you see him and Pennington at muster? A. I saw him at muster, but not with Pennington; I was at the cave when the body was taken out.

Cross examined. Q. Was the body much disfigured. Q. Some of the teeth were out but I would have known it.

Examination in chief. Q. Do you recollect the clothes that Davis wore? A. I do not, but feel pretty sure the hat in court was Davis.

Dr. H. Hopson sworn. Q. Were you acquainted with Davis? A. I was not. Q. Were you at the cave when the body was taken out? A. I was. One side of the skull was gone, but saw no bruise or cut on the body.

Cross examined. Q. Did you see ony trace of blood outside the cave? A. I did not. Q. What was the condition of the body? A. The upper part of the face was gone, the hair matted with gore—decomposition had to some extent taken place. Q. Do you think the body was in a state to be recognized? A. I think it might have been though the face and head were a good deal disfigured.

W. S. Compton, recalled. Q. What kind of a coat did Davis wear? A. A dark jeans, somewhat darker than mine.

Cross examined. Q. Did you see Emsley Henderson at muster? A. Yes. Q. Was he not very drunk? A. He was about as drinky

(as usual, but knew pretty well how to navigate.)

Examination in chief. Q. Would you believe Henderson on oath. A. I would. Q. Was he not sober enough to know what he was about? A. He was not so much in liquor but what he knew all about what he was doing.

Cross examined. Q. Does not Henderson generally get so drunk at public places as not to know what he does. A. I have never seen him so drunk as to be incapable of knowing what he was about. Q. Did you not suggest to the Commonwealth's attorney to call you to testify as to this? A. I was called by the Commonwealth's attorney, and did not come round to the witnesses' box at my own suggestion. Q. Have you not talked with the witnesses about these matters? A. I have talked with some to find out what they would prove.

John W. Grissam, sworn. Q Were you acquainted with Davis? A. I was. Q. Did you see him at muster on the 9th of May? A. If I saw him it was just as he was about to leave; I did not see him in the crowd. Q. Did you see Pennington there? A. Yes, I had business with him Q When did you next see Pennington? A. At the exhibition. Q. About what time was it when you last saw him at the muster? A. About two or two and a half hours by sun. He said he was about leaving. Q State what you know about Penninington and Davis being together? A. About this time I saw Davis in a company of four or five. Pennington being one of the company. Who the others were, I don't know. They were just above the spring. I called Pennington back, and the others went on. Q. Were they on their horses? A They were not, but were advancing towards a grove of saplings on the right side of the spring, in the direction of the meeting-house.

Cross examined. Q Did you see Henderson at the muster? A I did. Q Was he not drunk? A I thought he was drinking.

Examination in chief. Q Was he too drunk to recognize any person? A I suppose not.

Cross examined. Q What kind of country is it in the neighborhood of the cave? A Very rough.

Examination in chief. Q Is not the cave on the way to old Pennington's, Alonzo's father? A It is pretty much on the route, about a quarter to the right.

Cross examined. Q Is it out of the way to Mrs. McFadden's to go by the church? A Not much, half a mile or mile, though the route is frequently traveled.

Thomas J. Edwards, called. Q Who were the persons you saw together? A John McFadden, Cisney, Pennington, Shuffle, and a man with a straw hat on. Q. What time was this? A About an hour, or hour and a half, by sun. Q What were they doing? Talking together. Our horses were hitched near together. Q. What kind of a looking man

was the one who had the straw hat on? A He was about thirty years old, rather heavy set, and had on, I think, a dark jeans coat. I am not positive as to the coat.

W. S. Compton, called. Q. What kind of a man was Davis? A He was about thirty years old, well formed, rather chunky.

Cross examined. Q How tall was he? A About 5 feet, 9 inches, I think.

Oliver Mitchum, sworn. Q. State if you saw Davis at the muster. A I did. Q. Were you at the cave when his body was taken out, if so, state whether the clothes were not the same. A I saw the body taken out of the cave. (He had on the same shirt as at the muster, a pleated bosom, with pearl buttons.)

Cross examined. Q How do you know it was the same? A I noticed his clothes, at the muster. Q. by Juror. Were the other clothes the same? A The hat and coat were the same.

John Kelley, called. Q. State what conversation you had with Pennington about Davis. A. I had two conversations with Pennington. (In the first he said Davis was in Clarksville plastering. I remarked that he had got smart to change from a rough stone mason to a plasterer.) At the second conversation Pennington told me that Davis was at a furnace below Eddyville at work. Q When was this? A. In June. Pennington said that Davis was afraid Bradley would come upon him because he had not a good title for the negro wench he bought of him. Q Where did this conversation take place? A. In the Dutch grocery.

Cross examined. Q. Did Pennington say he saw Davis in Clarksville. A. No, he said Davis was there. Q Who commenced this conversation? A I did. Q Was it before or after the body was found? A It was before

W. S. Compton, called. Q Did you ever give a note to Davis? A. I gave, I think, two notes to Simon Davis, one was nearly if not all paid. Q. Were there any credits on it? A I do not know whether it was credited. Here the evidence on the part of the prosecution closed, and was followed by witnesses called in for the prisoner.

FOR THE DEFENDANT.

William Wicks, sworn. Q Are you acquainted with the muster ground and neighborhood? A Yes, the land is mine, and I have lived there many years. Q Is not the road by the spring the one traveled in going from the muster ground to Mrs. McFaddin's? A It is a very good course, and the one usually traveled.

Cross examined. Q Which road would your prefer? A The one by the spring. It turns a little after two or three miles. Q. Which is the best way to old Pennington's? A The road by the meeting-house.

Abner Cooper, sworn. Q Were you at Mrs. McFaddin's when Pennington came? A I was, and had gone to bed, but got up to put

his horse away. Q What time was it? A About two hours in the night. Q Was supper over? A. It was after supper awhile when he came. Q Did you not go to bed earlier than usual? A. I don't know that I did—I think it was the usual bed time. Q Did Pennington have more than one horse? A I did not see but one. Q When did Pennington leave? A The next morning, after breakfast. Q Did Pennington have a gun? A I don't recollect that he did. Q Did not Mrs. McFaddin tell you that morning to see Pennington at muster, and ask him to come and see her? A I don't recollect that she did. She told me to tell Causey to tell Pennington. Q How long did you sit up? A About an hour or so. Q What did Pennington and Mrs. McFaddin talk about? A About business.

Cross examined. Q What time did Pennington get there? A About two hours in the night. Q. by a Juryman: Did Mrs. McFadden tell you to see Pennington, or to ask Causey? A. She told me to ask Causey to see Pennington. Q by Defendant: What time did you leave the muster ground? A About an hour and a half by sun. Q Did not Pennington speak of going to Mrs. McFaddin's? A I don't recollect that he did.

William Harkins, sworn. Q What time did you leave the muster ground? A About an hour by sun. Q Did you see Pennington about the spring? A I don't recollect of seeing him there. Q Did not Pennington have a gun? A He tried to sell me one. Q In what direction do you live from the muster ground? A In the direction of the cave. The way I went home was as near as any the cave. Q. Did you see Pennington on the road? A. I did not How near to the cave did you pass? A In a quarter of a mile, but was not in the road that leads to the cave from the main road. I live in half a mile of the cave. Q What time did you get home? A About dark. Q. Did you come by the meeting-house? A I did. Q Did you see old Pennington at the muster? A I did. Q Did he travel the same road? A As far as — four miles from home. Q Do you know of any other road leading to the cave? A. I do not Q Was any one in company with you? A My brother. Q Did you ride slow? A I rode fast.

Cross examined. Q What time was it when you got home? A About dark. Q How far do you live from the cave? A About half a mile. Q Is there not another route to the cave than that you travel? A I could have gone another route. Q Were there many persons at muster? A A great many. Q Did you see many hats like this there A Not many.

James Robinson, sworn Q Were you at muster? A I was Q. Do you know Isaiah or Isham Shuffle? A I do. Q Was he there? A I saw him there. Q Where does Shuffle live? A Beyond my house. Q. Did you see Cisney at muster? A I saw him pass my house with Shuffle, but don't recollect seeing him at muster. Q What time did you get home from muster? A About dark or a little before. Q How

far do you live from muster ground? A One mile and a half. Q Did you see Cisney and Shuffle as they went back from muster? A I did not see them pass by my house. Q Were there not strong suspicions against Cisney and Shuffle? A There were. Cisney was arrested and put in jail for the same offence. Q Were you with those who arrested Cisney? A I was not. Q. Who brought Cisney to the cave? A (Mills, Utley, Compton, Gregory, Word and others arrested him and brought him to the cave.) Q Didn't they turn Cisney loose? No. Q Did you see Pennington at muster? A I can't say positively. Q Didn't you stop on your way home? A I went home without stopping. Q Did you know Davis and his horse? A I did not know either one. Q Did you go to see where the horse was fastened in the woods? A I did not. Q. Do you remember how Cisney and Shuffle were dressed? A I do not, but think one had on a straw hat.

John McFaddin, sworn. Q Did you not go to muster with Pennington? A I did. We got there between 10 and 11 o'clock. Q With whom dd you return? A With Fritz. Q Did you not return with Pennington A I did not. At what time did you leave muster? A About two hours by sun. It was about sun set when I passed Fritz's house.

Cross examined. Q Did you not live with Pennington? A I did. Q. Did not Pennington take the property of Davis? A I don't know that he did. By Defendant. Q. Did Pennington bring home with him another horse besides that he rode? He brought none but the one he rode.

Cross examined. Q Did you not state to Mr Dulin that you were in the bushes with Cisney, Davis, Pennington and Shuffle? A I did not. Q. Were you not with them? A I was with them when Pennington and McFaddin traded horses.

William West, sworn. Q Were you at muster? A I was. Q Did you see Davis there? A I don't recollect that I did. Q Are you acquainted with Davis? A Not well. Q What time did you leave? A About an hour by sun. Q. Did you see Pennington the next day? A The next day he stopped at my shop. Q Did you see Pennington at muster? A I did. Q What time did you get home? A. About sun-set. Q. Whom did you see with Pennington? A McFaddin. Q. Was not your horse tied with his? A My horse was tied above the spring. Q Did you not arrest Cisney and Shuffle. A I was one of the company who went to do so. A Were you at Canton when Pennington arrived? A I was, and heard some conversation between Pennington and the company. Q State what Pennington said? A. Pennington told me where he nad been, what he had seen, etc. Q Did he not say he would not have fled but for what had occurred with regard to arresting him? A I heard him say he discovered men at his house when he got home, and heard what they were talking about.

Cross examined. Q. Where did Pennington say he was, or had been? A He said he was beyond the limits of Texas, where there were

no counties. Q by Defendant. Did Pennington not say he was taken in Arkansas? A I did not hear him say so. Q. by Defendant. Did he not say he had bought land in Texas? A I did not hear him say so.

A. Cooper, called. Q. How long had you been at home when Pennington came? A About an hour. Q How far is it from the cave to Mrs. McFaddin's? About six miles.

John W. Grissom, called. Q. What route did you go home? A By McKinney's Mill. Q Where do you live? A On the Greenville road. Q Would not any route from the muster ground go by the church? A It would. Does not Pennington generally wear a white hat? A I have seen him wear one, but do not remember what kind he wore that day.

Winn Compton, called. Q Were you at drill on Thursday before the muster? A I was. Did you know Davis' mare? He had a sorrel mare with a bald face. Q When did you see her last? A Not since the muster. Q. Did you not go to arrest Shuffle? A. I carried the writ.

D. S. Hays, called. Did you issue a warrant for Shuffle? A Yes, I issued one to arrest him. Q Did you not hear threats of violence made against Pennington? A Not before Pennington left. Q You heard none? A I heard none. Q. Did you not hear it said they would hang him if he was caught. A Not before he left. Q When did Pennington leave? A I think it was about a week after they began to search for him. Q And you heard no threats against Pennington? A Those persons in custody were spoken of a good deal, not so much was said about Pennington.

Cross examined. Q Did you ever go to look for Pennington? A I went with a company one night to Pennington's house about a week after the body of Davis was found. Q At Canton when did Pennington say he left? A He said he left on the night he heard that Davis' body was found.

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Here the counsel for the prisoner remarked that he believed he was through, and the witnesses on behalf of the defendant closed. Were we disposed to hazard an opinion on the case at this stage of the proceedings, our attention would be arrested by the fact that (Pennington adduced such feeble and meagre testimony to rebut the strong circumstances connecting him with the murder of Davis.) It is true that he was closely confined, and more limited as to time than the prosecution, so that he could not be expected to have in attendance witnesses to rebut the presumptions raised; but notwithstanding these unfavorable circumstances it must be admitted the evidence he adduced was utterly weak and unsatisfactory. Without commenting on or classifying the testimony, pro or con, we proceed to give a copy of the letter the Court rejected as improper evidence. The letter purports to have been written by W. C. Gray to the Rev. Wm. B. Pitts, and was found on the person of Pennington when apprehended:

CHRISTIAN COUNTY, KENTUCKY, Nov. 9, 1845.

WM. B. PITTS—Sir, in answer to your letter in regard of reports concerning L. Pennington, in this country, they have been very bad, etc., he got in a difficulty with what is called the Clark band, and left this country in June. Some time in July there was a man by the name of B. F. Cisney, taken up on suspicion of killing a man by the name of Davis, and swore said Pennington took his mare, and carried her to Illinois, and turned her out on a prairie, where he had other horses. That has all proved to be lies. Cisney carried nag to Gallatin, and sold her for a double barrelled shotgun, and $25 in cash, which has been proved since, and since Cisney has been in jail, he's professed to get religion, and sent for a preacher to pray for him, and cleared Pennington, and implicated a man by the name of James McIdson; they are both in jail now, and there was one of Davis' pistols found in the hands of McIdson; the people has been dreadfully excited against Pennington here, and did petition the Governor to bit a reward for him, besides others, but it has changed by all impartial men. Davis was found about 30 miles from Pennington. As regards Davis having land, that is false, he never owned any land, but the same report was here in the adjoining county, and every other report that could be. He has very strong enemies and very strong friends. There were 32 of his enemies that has killed old man Shepperd and his son and wounded another little son very bad, and crippled the old woman, and they are all indicted for murder, and report say all have left, though if Pennington comes back they will law him I expect. Yours, etc.,

W. C. GRAY.

[The above letter was forged by Pennington.]

———O———

HOPKINSVILLEE, KY., May 6, 1846.

MR. M'LARNING—

Dear Sir:—A rumor has reached us that erroneous impressions are abroad respecting the trial and conviction of Pennington. We also learn by our exchange papers that the general opinion, as formed from the evidence reported and published by our neighbor of the "People's Press," is that he, Pennington, was convicted on insufficient grounds. As you well know we were present during the whole proceedings, and no doubt was left on our mind of his guilt; for we heard all the testimony, and a stronger array or more unbroken series of circumstances unfavorable to his innocence, can hardly be conceived. We are also informed that your speech was inaccurately reported, and that you have since that time written it out.

To relieve the public of its errors, and remove from our community the prejudicial impressions spoken of above, we respectfully solicit the

MSS. for publication in our paper this week. Your compliance will aid the cause of truth, and confer an obligation on

Your friend and servant,
EDITOR GAZETTE.

———H———

HOPKINSVILLE, May 7, 1846.

EDITOR OF THE GAZETTE—

Dear Sir :—In compliance with your note of yesterday, I herewith furnish you with a copy of the Speech delivered by me on the trial of Pennington. Though condensed it is almost verbatim as delivered. It was written by me imediately after the trial, with the view not of being published in a newspaper, but if a narrative should hereafter be published of the trial, that it might be ready, if I should be requested to furnish it, for such publication. The sketch as reported for the "People's Press, was nothing but hasty notes taken whilst it was delivered, consequently meagre and inaccurate. Yours, etc.,

JOHN M'LARNING.

———H———

GENTLEMEN OF THE JURY:

It now devolves upon me, in the discharge of my duty as attorney for the Commonwealth, to submit for your consideration some comments on the testimony, and to direct your attention to such portions of the law as may be necessary and applicable to this case. I do not propose to enter into detail in reviewing the testimony of each witness; for even were I desirous, and considered it material so to do, the arduous and protracted labors which I have had already to perform as attorney for the Commonwealth, in the trial of several other important cases since the commencement of this term, have almost rendered me physically incompetent.

The evidence against the accused is wholly circumstantial, but of such a character, and composed of the testimony of so many separate witnesses to distinct and independent facts, all pointing and converging so unerringly to one common centre in such a manner as to leave no rational grounds for doubt of the prisoner being the perpetrator of this most foul and diabolical murder.

The secrecy with which the most enormous crimes are committed makes their punishment most frequently depend upon circumstantial testimony. Murders, robberies burglaries, and all the astrocious crimes that make up the long, dark and bloody catalogue in the annals of human guilt, are mostly, if not always, perpetrated in secret, where no human eye can witness the deed, and in such a manner, as it is thought that no human scrutiny can ever detect and establish the guilt of the

offender.) If circumstantial testimony was not held by the law competent for the conviction of offenders, then would the most terrible and soul revolting crimes go forever unpunished.

The law regards such testimony as has been adduced on this trial against the prisoner, as of the most conclusive and satisfactory character. A single witness may commit perjury, a few witnesses may be in concert and combine together to swear falsely to the same fact and corruptly sustain each other; but circumstances so numerous and independent each one of the other, as in this case, could not be fabricated; no two witnesses in this long chain of testimony testify to the same fact, except the discovery of the dead body. There could be no concert amongst such a cloud of witnesses, yet all the circumstances and facts, detailed by so many different witnesses taken together, are wonderfully harmonious, and irresistably force the mind to the conclusion of the guilt of the prisoner.

In this case, there is no possibility of punishihg the offender, only by circumstantial evidenee. The perpetrator of the foul and bloody deed sought the hour of darkness for its cover, and to keep it forever concealed, the dead and mangled body of Davis was thrown into a cavernous pit in the earth, in a remote and unfrequented forest. This is one of the most foul and diabolical murders that ever shocked mankind, or ever disgraced the calendar of crime; all this array of powerful and overwhelming testimony, without a single shade of circumstances to raise a doubt in his favor, point to this man as guilty of this most damning offence against the laws of God and man.

Gentlemen, to make your pathway of duty stiil more clear, in the application of the testimony and that there may not be a shadow of doubt on the minds of the most scrupulous and conscientous, of the competency of circumstantial or presumptive evidence to warrant conviction in criminal cases, I will read you from from the law of evidence. (Starkie, vol I.)

"The consideration of the nature of circumstantial evibence, and of the principles on which it is founded, merits the most profound attention. It is essential to the well-being at least, if not the very existence of civil society, that it should be understood that the secrecy with which crimes are committed will not ensure impunity to the offender. At the same time it is to be emphatically remarked, that in no case and upon no principle can the policy of preventing crimes and protecting society, warrant any inference which is not founded on the most full and certain conviction of the truth of the fact independently of the nature of the offence and of all extrinsic considerations whatsoever. Circumstantial evidence is allowed to prevail to the conviction of offenders, not because it is necessary and politic that it should be resorted to, butbecause, in its ownnature it is capable of produingthehighest degree of moral certainty in its application. Fortunately, for the inter-

ests of society, crimes, especially those of great enormity and violence, can rarely be committed without affording vestiges by which the offender may be traced and ascertained. The measures which he adopts for his security not infrequently turn out to be the most cogent arguments of his guilt."

Gentlemen, the law just read, which is reason and common sense when applied to the evidence fixes the guilt upon the prisoner, and makes it your duty to convict him. (The measures which he adopted for his security, as I will hereafter show, have turned out to be the most cogent arguments of his guilt.) But your verdict must be founded on the evidence, and if there shall be a reasonable doubt on your minds as to his guilt, it will be your duty to acquit him; for you can not believe him guilty if you have a rational doubt. Belief and doubt are utterly inconsistent, and can not exist in your minds together. During the progress of the examination of the witnesses, attempts were made on the part of the counsel for the accused, to bring into this trial something about the organization and doings of a society in this county, called a safety society, to account for some of the conduct of the prisoner, and to show that great prejudice was excited against him. Gentlemen, in the discharge of your duties as jurors, you can have nothing to do in the consideration of the organization and conduct of such a society; nor can say anything that was done, or in contemplation to be done by such a society, have anything now to do in the consideration of the innocence or guilt of the accused. I have no fellowship with any such societies, or any set of men, when their object is to take the law in their hands and inflict punishment upon offenders. Such organizations, whether they be called regulating companies, or safety societies, are behind the times in which we live. (They may be somewhat adapted to a half civilized, barberous state of society; they may suit such a state of society as that which exists where Pennington was found, beyond the outposts of civilization; but they do not suit this enlightened day in Kentucky.) But, gentlemen, there is no evidence that Pennington, or any one else had any thing to fear from this society; there is no evidence conducing to show that this organization was for any other purpose, than for the apprehension of offenders in aid of the law, and and having them brought to justice by a judicial trial. And is it not praise-worthy, is it not patriotic, for private citizens, to rally around the standard of the majesty of the laws of their country, and bring offenders to justice.

When great crimes are committed in secrecy and in darkness, it requires extraordinary exertions, something more than finding an indictment by a grand jury, or the issuing of a warrant by a justice of the peace, to detect and apprehend the offender; it requires the concentrated zeal and energy of the people to do it.

In this case a shocking murder has been committed; the people in the vicinity became excited, and aroused to bring the murderer to jus-

tice. It was necessary that they should meet together to consult how to find the dead body and apprehend the offender. A single man could not achieve these objects, and the acting separately and individually by each man would have insured hopes of but little success. It required deliberation and time and money, and it was natural, right and proper for the people to assemble together; it was their duty as good citizens, who wished to uphold the law and suppress crime to do so. It may have been in bad taste, when so assembled, to style themselves a society by name, but that can cut no figure in this trial.

There is no proof that there ever was any intention to inflict summary punishment on Pennington or any other offender by this society, when apprehended, and no such intention ever did exist, and no proof can now or hereafter be brought forward to establish it.

From the conversation between Mr. Buckner and Mr. Dulin while he was giving his testimony, it appears they are both members of this society, and their character forbids the idea that they should take the law in their own hands, and inflict violence on persons charged with crime, and when apprehended,—that they would become the murders of a murderer. (For, gentlemen, taking the life of the greatest malefactor, without the authority of law, is murder—it is murder in heaven and on earth—it is murder by the laws of God and man.) I would not have the blood of the foulest murderer on my conscience for all the treasures mortal climes afford, nor would the men who composed this so-called society. I know them, and know better. Their object was to catch, not to kill or hurt a hair of the head of Pennington or any of his accomplices in crime, but to bring them to answer at the bar of public justice for their offences.

When objection was made in the progress of the examination of the witnesses to anything being said about Cisney, Mr. Buckner took occasion to say that I appeared to be very careful of Cisney's character; that I seemed to consider myself the guardian of his character. He surely could not be in earnest in making such an insinuation. I would suggest to the gentleman, that neither he nor myself are very skillful in the use of sarcasm, repartee or ridicule, and when we attempt to use them they appear in our hands awkwardly, very much like borrowed weapons that we don't how to handle, and the less we affect to use them the better we will appear. (Cisney is indicted with Pennington, for aiding and abetting in this murder, and I objected to the questions because they were irrelvant and improper in this trial, and would tend to prejudice the public mind, and disqualify men present from being competent jurors for the trial of Cisney, if he should hereafter be arraigned upon this indictment.)

It appears from the testimony, that Davis lived near Pennington, alone, without family or friends, his wife being dead; that he intended to break up house-keeping and leave the country as soon as he could sell his property. Pennington, with all the subtlety of a fiend, had in-

gratiated himself in Davis' favor and made him believe that he was his best friend by artfully winning his confidence. He had Davis trailing after him at his heels from place to place, while he was scheming and contriving his murder and robbery. Whilst poor Davis was following him and looking up to him as his kind and generous-hearted friend, he was coolly deliberating upon the means of his murder. The soul revolts and sickens at the contemplation of this brutal homicide. Pennington's heart must be baser than that of the imp of the dark regions of the everlastingly damned, or he never would have murdered this man under such circumstances.

Davis was seen with Pennington at different times and places shortly before the 9th of May, the day of the muster, on which he was killed. It is proved by Bradley, that he was with Pennington in town about a week or ten days before the muster. Pennington said he had bought Davis' property, or rather he agreed to take it, but it was agreed that Bradley should have the negro by giving Pennington $20 for his bargain. Bradley agreed, in Pennington's presence, to pay Davis $150 on the next day for the negro. There is no proof that Pennington ever paid Davis anything for his property, and it matters not whether he paid for it or not, it is all the same, for by his murder and robbery he would get the money back if he had paid for it, and if he had not, he would get the property without it. Pennington did not know, so far as the testimony goes, otherwise than that Bradley paid Davis on the next day according to the contract $150 for the negro. It is shown by the testimony of Kelly that Davis was with Pennington in town the day before the muster; that Davis then had money, and that Pennington seemed to be with him wheresoever he went, except to Kelly's house he was with him on the street, he was with him at the Dutch grocery, and they left town together.

Then it was that Pennington was maturing his fiend-like plans for Davis's murder and robbery. Under friendship's holy garb he was luring the blind, unconscious victim onto his awful doom. Nothing was wanting but a fit opportunity of decoying him to this dismal cave, for the winding up of this infernal tragedy.

Davis had sold his negro and had the money. Pennington could prove by Bradley that he had bought his property, and it was known that it was his intention to leave the country as soon as he could dispose of his property, which it would appear was now done. How easy could Pennington then imagine that no inquira would be made about him when killed and securely hid in this cave?

The cave is an obscure out-of-the-way place, in the neighborhood where Pennington lived in early life, and near the residence of one of his brothers-in law. He knew all about it, for it was near the familiar haunts of his childhood, and the spot where he was raised. The cruel and bloody deed once performed and the dead body cast into this perpendicular cavern, in a solitary place, in an unfrequented forest,

he might imagine it never could be discovered and he might be safe in the possession of Davis's property and money, as nothing would be said about his disappearance; he being friendless add obscure, it would be readily supposed that he had left the country in pursuance of his previously expressed intention.

It is absolutely established by the testimony, that Pennington and Davis were at the muster the day on which he was killed. Edwards testifies that late in the evening, an hour and a half or two hours by sun, he saw Pennington, Cisney, and two or three others that he did not know, not being acquainted with Davis, out some distance from the crowd, in the woods or a thick growth of small timber, Pennington was talking in a low voice, with a man the witness did not know, who had on a hat like this produced here in court, and proved to be the hat that was found in the cave with the dead body. The witness states, that the man had on a jeans coat, such as was on the body in the cave, and that he was a man of about the age and size Comp'on describes Davis to have been, who knew him well. Grissem states, that he knew Davis when he saw him: then on the evening of the muster (about the same time spoken of by Edwards) he saw Pennington, Davis and two or three other men, to him unknown, going from the spring where the crowd was assembled, to the place designated by Edwads, where he saw them in the woods. Having business with Pennington as a constable, he called to him, and he turned back, but the others went on. Pennington soon slipped from him in the crowd and he saw him no more. The evidence of Edwards and Grissem taken together clearly identifies Davis to be the man Pennington and his accomplice Cisney had out in the bushes as seen by Edwrads. Henderson testifies that he saw Pennington and Davis start off together about an hour by sun in the direction towards the cave. The connsel for the prisoner has attempted to discredit the testimony of Henderson, by making it appear that he was drunk on that day. Henderson admits that he had been drinking pretty freely, but says he was not drunk, and knew what he was about—he knew Pennington and Davis, and everybody else as well as he ever did. But if he was drunk that he is not drunk now, and can it be supposed that a man will swear to a fact when sober, that may have happened when he was drunk and incapable of knowing whether it took place or not. Henderson tells you that his seeing Pennington and Davis ride off together, was revived in his recollection by hearing that Penningtn was suspectee of having killed Davis. Other wieuestes who were examined to discredit the testimony of Henderson, say that they saw him at the muster, and that he was drinking, but not drunk, and that they would believe him on oath. His tastimoy stands unimpeached, and you are bound to give him credrt as a witness.

It is five or six miles from the muster ground to the cave, and about the same distance from the cave to Mrs. McFadden's where Pen-

nington staid all night, and also about the same distance from the muster groud to Mrs. McFadden's. The course from the muster ground to Pennington's residence is in an almost opposite direction from that of the cave and Mrs. McFadden's. Davis told a witness that he was going that night to old man Pennington's with the prisoner to get some money, and it is proved that the most direct route from the muster ground to old man Pnnington's is close by this cave. The witnesses state that Pennington could have gotton to the cave about dark from the time he left the muster ground, and in about the same time to Mrs. McFadden's had he gone there from the muster ground. But, instead of getting to Mrs. McFadden's by dark, he did not get there until two hours after night. He had, from the time he left the muster ground, about an hour to get with Davis to the cave, and about two hours after he got there to commit the murder and get to Mrs. McFadden's at the time he he did in the night.

Was there ever a more plain case of guilt made out by tetimony direct or circumstantial If inncent, he has the power of doing away with all this powerful array of testimony against him by showing where he was between the time he left the muster ground and his arrival at Mrs. McFadden's in the night. It is within his knowledge and his alone, and he is bound to account for this interval, or the evidence is conclusive against him. It will not avail him to say he cannot do so, by reason of the length of time between the day of the murder and his trial. He khew he was suspected of the murder shortly after the muster, and then, when it was fresh in his recollection with whom he left and where he was all this time, if innoent he could have relieved himself of the charge. He can prove by one of the McFaddens that he went with him to the muster; by an other that he swapped horses, and was to get from him oil of spike to cure the horse of some disorder; he could prove that Mrs. McFadden had told some person to tell him that she wanted to see him about bdcoming her security as guardian for her children; he can prove that he was at west's blacksmith shop on the nekt morning—he can prove all these trfling and unimportant circumstances, but he cannot prove that he was even seen after he left the muster ground that evening; he cannot prove where he was from an hour by sun til two hours in the night, when he arrived at Mrt. McFadden's a distance of a bout six miles from the muster ground.

Pennington had his plans as well laid and matured, as they could be by a wicked and depraved mind, hardened in crime, for the murder and robbery of Davis. That the object was robbery is clearly shown by the pocket book of the murdered man being found near the mouth of the cave, rffled of its contents, and his property being, in a few days, taken possession of by Pennington. It may be contended that he bought it; but that is holy immeterial, for by the death of Davis he would get it without paying for it; or if he had paid for it, by his murder and robbery Pennington got the money he paid for it back again.

But, it is in proof that Davis, on the day of the muster, was trying to sell some of his property. Bradley's evidence only shows that Pennington agreed to buy it, and not that he han bought and paid for it.

The prisoner was suspected guilty of the murder in a short time after the muster, and his conduct then, together with all previously combined circumstances against him, produce the highest degree of of moral certainty of his guilt (In the language of the law read to you, the very measure he adopted for his security turned out to be the most cogent arguments of his guilt.) He fabricated one false statement after another, to avert enquiry and allay the public mind. He told different persons different tales about Davis.) Guilt stared him in the face at every step, and he couldn't tell the same tale twice. It was not remorse of conscience that made him falter; it was his guilty fears that paralyzed him and made him incapable of being consistent in his falsehoods. He is incapable of feeling the remorse of conscience as the wicked one. His giùlty fears became auxiliary expcnents of his guilt when he attemptnd to occount for tne absense of Davis. His false and contradictory statements are utterly inconsistent with innocence. It was guilt that made him tell Compton that he had seen Davis since the muster, (and that he was then at work at Clarksville; Kelly at one time that he was in Illinois, at another that he was near Eddyville at work; Harrison that he seen him somewhere ou the Ohio rivea near Paducah working on a steam mill; old man Vaughan that hs was in Illinois, and Bell that he was only keeping out of the way of the sheriff for fear of a writ.) These numerous false and contradictory statements were the offsprings of a guilty mind. They were not made to vindicate his good character from the guilty charge. for that is a property of which he had been for many years destitute. His character gave him not one moments concern. They were made to lull the suspicion against him and to stop any search from being made for the dead body. For, he well knew that, circumstances might be powerful and conclusive as to his having murdered Davis, he could not be convicted until the body was found. (He went openly and publicly about from place to place till he heard the body was found, and then it was that he fled so fast and so far that he did nct stop, as he says, he had almost got out of the world, iu the northern part of Texas, within fity or sixty miles of the rising goounds of the Rockey Mountains, where counties have not yet been organized.) When he heard the dead body was found, he knew the proof wold be fuli and complete against him, and terror of punishment seized upon his guilty soul, and he fled under the auspices of the dark shades of night, leaving father and mother, wife and children, and all the endearments of life forever, to take up his abode in unknown regions, with wild beasts and savage men. What stronger evidence taking all the testimony together, can there be of his guilt? Guilt of the foulest aud most atrocious crime that cver was commited by the most wicked and depraved of mankind—robbery and murder.

To cleanse the land from crime, to protect the lives of men, and for the preservation of society, such men as Pennington must be cut off. If they are permitted to live, this will become a world of infernal demons,—this fair earth from being the footstool of God will be but the trap-door of hell. Poor, unfortunate man!—any man is poor and unfortunate and to be pitied who is so base, so vile, as not to be fit to live. I am sorry with all my soul when I see one of my own fellow creatures so lost. We should sympathize with him as a human being, but we cannot sympathize with his crimes, we cannot try him by our sympathies, but by the evidence of his guilt. The guilt of Pennington is inevitably fixed; all this weight of testimony excludes every hypothesis of his innocence; all these powerful circumstances mark him out, and point to him as unerringly and steadily as the needle points to the pole, as the man who murdered Davis. Something has been said during the progress of this trial about the excitement gotten up to the prejudice of the prisoner. Is is time to be excited when a robbery and a murder shocking as this has been committed in a civilized community. The savages, white and red, where Pennington was found, would be excited by the commission of such a deliberate cold-blooded murder amongst them; the greatest crime known to the laws of God or man, a crime at the bare mention of which the soul shudders and shrinks.

Gentlemen, the prisoner's guilt is established beyond all doubt, and I will now come to a conclusion, having discharged my duty to the Commonwealth, to this community, and to you, to the best of my ability.

SPEECH OF JAMES F. BUCKMER, Esq.

GENTLEMEN OF THE JURY:

I must acknowledge that I never arose to address a jury under more embarassment. I stand before you as the only counsel of a man upon trial for his life. I have frequently appeared in criminal causes, but never before in a case of this magnitude, where the accused entrusted his defence to my individual efforts. I feel deeply the responsibility I have assumed, and although I shall not shrink back intimidated by the great array of persons who seem eager for the conviction of the accused, yet I am conscious that he has been very unfortunate in not being able to procure counsel of greater ability than myself. I need not say to you, gentlemen, that the case you are sworn to try, is of the deepest interest to the whole community; for that is manifest from the presence of the immense throng of spectators by which we are now surrounded. The case is one which has excited this whole community for near twelve months past.

The prisoner before you stands indicted for a crime of the greatest magnitude; the penalty of which, should he be found guilty, is the se-

verest imposed by our laws. By your verdict he will be restored to his family and to liberty, or be consigned to an ignominious death. You have been selected as the triers of this case because you severally stated upon your interrogation, that, as between the Commonwealth and the accused, you stood impartial; and, although some of you, from rumors you had heard in the country, had partially formed opinions, you could divest yourselves of your preconceived opinions, and fairly decide the case upon the evidence which you should hear upon the trial. The usual course upon similar occasions is to select men entirely unacquainted with any of the facts of the case they are to try, with minds perfectly unbiased, either by rumor, the statement of parties, general excitement in the country, or by any other csuse or influence; but the law regarded you as legally competent, and relying upon your known sense of justice, your firmness of purpose, your intelligence and the integrity of your characters, I submit the cause of the prisoner in confidence to your decision.

You have sworn to try this case solely upon its own merits, and to give your verdict upon the law and testimony. The duty which you are to discharge is delicate in its character, and of the greatest importance not only to the accused, but to yourselves and to your country. I know the extent of the excitement which pervades this hitherto peaceful and quiet community, and the amount of prejudice with which the prisoner has to contend; and from intimations which I have heard, that prejudice may to some extent embrace the counsel who conducts his defence; and perhaps it is necessary that in this case I should deviate from my usual professional course and make some allusion to my own position as counsel for the accused.

Ten days ago I had little expectation of being employed in the defence, or in any way participating in the trial which excites so much interest in the public mind. I had not the vanity to suppose that amidst the many experienced and distinguished lawyers who attend this bar, I would be deemed of sufficient importance to attract the attention of one placed in a position of such imminent peril; but the position of the accused is different from that of most persons whom I have seen indicted for an alleged violation of the laws in this country. (Incarcerated in prison under a strong guard, cut off from all intercourse or communication with the world without, destitute of means to secure the aid of able counsel, without a single friend or relative who dared manifest any sympathy or interest in his behalf, deserted by all the world save his wife, who still clings to him with all the instinctive fondness of a woman's heart—when appealed to by her, whatever others might say, I felt that I had no right to refuse.) Let me not be understood as apologizing for the part which I have acted in this trial. I have no apology to make in reference to anything which I have ever done in connection with my course as a lawyer; and though I appreciate as highly as any man on earth, the kind regard of my friends, and the good will of my

fellow men generally, yet I cannot permit considerations such as these to swerve me so far as to suffer any set of men, however powerful or respectable, to dictate to me what shall be my professional course. I am determined to vindicate in my own person the independence of the bar, and that no power but my conscience, and my own sense of justice, shall prescribe for me the rule of my professional conduct.

I am fully aware of the excitement and feeling which now surround us, and the causes which have produced it, and I would here suggest to the audience that within the walls of the sanctuary of Justice is not the proper place for its manifestation. (The feeling which has been displayed in some portions of the county in reference to this trial is not in accordance with that high sense of justice, love of order, and humanity which have ever distinguished the people of Christian, nor is it best calcuated in causes of this importance to elucidate truth.) I know whom I am addressing, and I know too that, when the events of to day shall have passed by, and reason resumed its sway, many of those who have been influenced by the excitement of the day will be the first to regret it.

Fortunately for the prisoner, that admits the excitement, turmoil and passion which seems to surround him, there yet remains to him (one of the most estimable privileges which pertains to our free government, the right of trial by jury.) Amid all his mi fortunes, he is fortunate in this, that punishment will not be inflicted in this country except it result from your verdict, and that no man however weak and friendless, shall be condemned during the reign of cival liberty and law, but by the judgment of his peers. Suspicion may rest upon him, passion may be aroused against him, resentment may pursue him, violence may threaten, but once within the precincts of the tomple of justice, they cannot harm him—within the jury box they cannot enter. The juror's oathis a soverign antidote, a shield to protect him against all malign influences. In the integrity of the jurors' and the solemnity of their oaths, he has a sure guarantee that they "will patiently hear, dilligently inquire, and a true verdict give, according to law and the testimony in the cause."

Let it be remembered, gentlemen, guilt can in no case be presumed; but must be proven. The attorney for the common wealth has argued this case as though his salutary maxim of law had been reversed that presumptioh of guilt was to be taken against the accused, that instead of the commonwealth being compelled to make out her case and prove the charges laid in the indctment, Pennington was bound to prove his innocence. Such, gentlemen, is not the custom of the courts, nor is it the law of the land. The fact that a man has been indicted for a crime, and has been arraigned before a jury of his country to answer to the indictment, is nof conclusive evidence of his guilt. The commonwealth by her attorney is bound to prove conclusively to the minds of the jury, by good and sufficient evidence, every charge in the

indictment; otherwise the prisoner must be acquited witnout adducing any proof on his part. For here comes to his aid that benevolet principle of law that every man is presumed to be innocent until found guilty.

Let us now turn our attention to the evidence before you, and see how far in accordance with the law that may be applicable to it, it goes to sustain the charges contained in the indictment, and wheather, taking the whole case, together with the law and testimony, you will be authorized to form the opinion which the attorney for the commonwealth seems to entertain. The witnesses introduced by the commonwealth state that Simon Davis lived about seven miles east of Hopkinsville, that his wife died some time before, after which Davis lived alone, having only a young negro girl, who ran off and left him a few days after the death of his wife. He had no other family. He was possessed of a small property in stock, consisting of a few hogs, cattle three head of horses, and a growing crop of corn and oats just planted; that Davis had become dissatisfied, and had frequently spoken of selling out his property and leaving the country in consequence of some disagreement with his wife's relations about their settling a claim to the negro girl and land on which he lived, and other propety which he had acquired by his marriage, so soon as his wife's death occurred. Davis was a stone mason, and frequently spoke of quitting farming, selling out, and going off to work at his trade, and going to some town in the state of Illinois, where he alleged he owned a town lot; that Davis sold his negro girl to Mr Bradley for $150, about half her value, in consequence of her having gotton in possession of an onther person, who claimed her as belonging to the other heirs of Nicholas Pyle, deceased, of whom Davi's wife was one. This was on 2nd May, 1845, and he on that day stated that he had sold to the prisoner, Pennington, his whole property, negro included for $300—reserving to himself only the sorrel mare which he rode; but by a subsequent arrangement made between Bradley, Davis, and Pennington waived his claim to the negro in favor of Bradley upon his paying to Davis the price of the negro, $150; Bradley also assuming at the time to pay Pennington $20, to make Pennington's bargain in the purchase of the other property of Davis, equal to the bargain obtained by Bradley on the purchase of the negro. All these left Hopkinsville together, and this bargain was agreed on while on their way home. No money was paid by Bradley on that day, to either Davis or Pennington; it was agreed that as a part of the price of the nepgro, Bradley should pay certain debts oweing by Daviss to Dr. Venable, and execution in the hands of Mr. Gibson, a constable, to have six months credit for a part, and pay seventy-five dollars in cash, which was done on the next day in Hopkinsville, at which time and place Pennington was absent.

On the 9th May following, there was a battalion muster at King's, near the Pleasant Hill church, about 14 miles north-east of Hopkins-

ville, and abcut eight miles from the neighborhood where Pennington and Dvis resided. Mr. Compton states that Pennington and Davis mustered in the same company, though he did not see them together that day, nor did he know whether they came to or went away from the muster together. Other witnesses prove that they did not go to the muster together. Davis is not seen at home afterwards.

In the evening of the same day about two hours by sun another witness, Mr. Edwads, states that near where Pennington and himself had tied their horsen on reaching the muster ground, as the witness was about to get his horse to start home, he saw Pennington, Benjaman Cisney, Sheffield, John McFadden and a man witness didn't know, wearing a straw hat, talking together. that penhington had a bottle in his hand, called witness by where they were and asked witness to drink with them which he did, and passed on and did not hear the stranger sey a word. Witness was unacquainted with Davis, and could not say weather or not the stranger whom he saw was Davis. He left the parties where he saw them. John W. Gresham, who is a constable and had an execution against Pennington, saw him late in the evening in company with four or five persons whom he did not know ,going from the spring in the direction whre their horses were tied ; called to Pennington at a distance of sixty or seventy yards, when Pennington promptly turned to the witness, the other persons passing on without haiting, the prisoner and witness returned to the crowd, when some person called wetness off and he saw Pennington no more that evening. Wetness had an execution against Pennington, urged him to pay it, bat Pennington spoke of his disappointment in getting money, and promised to rplevy it, but he and Gresham were separated in the crowd and it was not done. This was on Friday the 9th, and on the following Wednesday he saw Pennington at the exhibition at Mount Vernon Academy, where he replevied the debt, being still unable to pay it. No witness who knew Pennington and Davis testified that they saw them together on that day except Mr. Emsley Henderson, who statea that he saw Pennington and Davis start from the spring and go in the drection of the church.—Pennington at that time had a bottle in his hand, and saw thm as far as sixty or seventy yards from the spring. The church as was proven is some 150 or 200 hundred yards from the spring, The stand was there from which the candidates addressed the people. Mr. Henderson was proven to be a man of very intemperate habits, and on that day as usual, was drinking freely long before that time, and according to the testimony of the witness, was quite noisy, drinking about among tne crowd ; according to his own confession, he had taken ten or a dozen drinks before the time he states that be saw Pennington and Davis leave the spring, Some two months afterward it was rumoured in the neighborhood that shortly after the muster a horse, suiting the description of the one which Davis rode to the muster, was found tied in a thicket in the rear

of the field where Cisney and Sheffield lived, in Todd county. Some persons went to look for the horse, but it had been removed. This circumstance excited suspicion against Cisney and Sheffield, and as Davis was missing they were arrested under the suspicion of having murdered Davis. Statements made by Cisney lead to the discovery of a dead body concealed in a cave upwards of six miles from the muster ground. This body was, by Mr W. S. Compton, stated to be the body of Davis. Mr. Gregory and others who had known him in his lifetime, could not identify it as being that of Davis. It was from statements made by Cisney, that Pennington was first directly implicated. It is true that the witness says he was suspected of having murdered Davis. The commnwealth's attorney objected to my inerrogating the witness respcting the suspicions against Cisney and Sheffield, alleging that he did not wish the community prejudiced gainst them, provided they should hereafter be brought to trial. But the indictmen which I hold in my hand charges both Pennington and Cisney with being guilty of the murder of Simon Davis, the one principal, the other as accssory, charged with aiding and abetting in the murder. The prosecuting attorney becomes exceedingly tender of the reputation of Cisney, and straneously objecrs my mentioning his name in connection wiht this unfortunate affair, but I must say to him that he cannot by this means divert the attention of the jury from the fact that this man Cisney has acted a prominent part in this matter, the records show the fact, and the indictment in his own hand-writing, now before me places them in connection, and from all the facts which I have heard detailed, it may very reasonably be inferred that if either was concerned. Cisney or Sheffield, and not Pennington, is the guilty man. But Cisney, though endicted and imprisoned, has broken jail and and fled; Pennington is yet in custdoay, and all these facts and circumstances which may have been intended for the conviction of the muder, are now made to bear upon the latter. The prosecuting attorney, alluding to this matter during the examination of the witnesses, rather sneeringly charged me with playing off a little borrowed wit, but in his opinion I had made a signal farlure, and remarked in substance that borrowed weapons were dangerous in unskillful hands. The manner of his remark caused me to feel keenly for a moment, for I thought he deviated in this instance from that courteons and delightful bearing which has ever distinguished him in his intercourse with the bar. But I attribute it to the fact, that in his zeal for the commonwealth, has unconsciously imbibed a portion of the excitement which seems to be so genral outside of the court house. But it has been stated by the witnesses that shortly after the muster Pennington took possession of Davis,s property, his stock, and commenced the cultivation of his crop' that bsusequently that some of the property was delivered up by Mrs. Pennington to the individual who applied for it, that there was no effot at concealment. It was also proven before you

that when asked about Davis by Mr. Comphon, Mr. Vaughan, Mr. Harrison, Mr. Kelly and others, and interrogated by them about where he was, that he stated that he was in Clarksville at work, at the Iron works of Paducah, and to others that he was in Illinois, and to some of them in some of these conversations, they state he said he knew where he was, that he had seen hiim. Mr. Compton stated, he said, he believed he had seen him at the exhibition. Mr. Kelly stated that he had two conversations with him about Davis, in which he stated that Davis was at work and doing well, and that he would soon return, so sooon as the dificulty with Bradley about the sale of the negro wss settled. He was frequently interogated by the neighbors about Davis, and where he was, and gave such replies as I have already spoken of. One conversatian was had according to the statement of Mr. Richard Vaughan, in the road leading to Edwards' mill, but of the manner that conversation commeuced the witness does not recollect, but but is confident he had the conversation with the details, and gave as a reason, that his family have lately told wstnesses, that he, witness, told them what was said when he come home. Such is the character of the conversations which have been proven on this trial against the accused, and are relied on by the prossecuting attorney as the most pointed and substantial evidence of the guilt of the accused. But, gentlemen I do not so regard them; and I shall show to yon that I am confident that you should not and cannot attch that sort of importance to mere casual conversations of the prisoner, held several months since, and the particulars and the precise words of the accused, resting in the memory and dependent upon the recollection of the witnesses. In refference to the law of this case, I will make no assertion as to what the law is, unsustained by authority, and under the sanction of the court and believing that the language of the law book is more explicit and and easy of comprehension than any explanation I can make, I will read to you from Starkey on evidence. Vol. 1, page 546, a work which is every regarded as the highest authority.

"Of all kinds of evidence, that of extra-judicial and casual declarations is the weakest and most unsatisfactory: such words are often spoken without serious intention, and they are alwys liable to be mistaken and misremembered and their meaning liable to be misrepresented pur exaggerated."

"A hearer is apt to clothe ideas of the speaker as he understands them in his own language, and by this translation the real meaning must often be lost. A witness who is not entirely indifferent between he parties will freqnently, without being conscious that he does so, give too high a coloring to what has been said."

"The necessity for caution cannot be too strongly and emphatically impressed where particular expressions are detailed in evidence, wich were used at a remote distance of time, or to which the attention o the witness was not particularly called, or where misconception was likely

to arise from their situation, and the circumstances under which the were placed, or from the prejudice of the witnesses, especially if h object was to extract admissions for the purposes of the trial. Suc evidence is fabricated easily, contradicted with difficulty. In cases this kind the conduct of the parties, and those facts and circumstanc of the case which are free from suspicion are frequently the safest a surest guides to truth. Evidence of this nature is of the very weake kind where it is doubtful whether the party making the admissio knew his legal rights and situation."

Such, gentlemen, is the construction which the law puts upon co versations, such as have been proven before you, and which form, a cording to the intimations of the commonwealth's attorney, the groun work of the accusation against Pennington, and is, in fact, the on proof which seems to have any bearing on the case. You see in wh light such testimony is regarded by the law, and how forcibly and a propriate are the reasons of the author. In illustration of the unc tainty of such testimony, and the serious consequences which may res from the mistake or inadvertence of the party detailing these conver tions, I will read you a case given in the same book, in a note to t same page from which I have just read:"

"I once heard a learned judge in summing up on a trial for forge inform the jury that the prisoner in a conversation which he had wi one of the witnesses, had said, "I am the drawer, the acceptor, and endorser of the bill," whilst the judge was commen ing on the force these expressions, he was at the instance of the prisoner set right a the statement of the witness, which was that the prisoner had said know the drawer, the endorser, and the acceptor of the bill. Had witness and not the judge made the mistake the consequences mi have been fatal. The prisoner was acquitted.

What is there in the character of the conversations which h been detailed which makes exceptions to the general rule, or that wo entitle them to greater weight than in ordinary cases? In my hum opinion that in criminal causes, instead of making exceptions in t favor the rule should be much more rigidly applied. You recollect h these conversations originated. Pennington lived within two mile Davis, and took possession of his property. This fact caused inqui to be made of him in the neighborhood, and the additional fact t Pennington had, on several occasions befriended Davis, and had se servant to cook for him after the death of his wife, and after his negro girl had left him. These facts were known in the neighborh Pennington took possession of the property under the authority o purchase from Davis; for Mr. Bradley distinctly stated that Davis mitted that he had sold all his property to Pennington, and that he tended to quit the country. Various witnesses testified to the fact Davis repeatedly tried to sell the property to them, and averred, his termination to go to Illinois, or to some other place to work at

trade. It was under these circumstances that these conversations were had with Pennington, at a time, too, when there was nothing to call the attention of the witnesses to the identical words of the conversation From these facts is it at all remarkable, after the repeated declarations of Davis, that he was going to Illinois, that he intended to leave this country for the purpose of working at his trade; that, when interrogated by persons, or in casual conversations about where Davis was, or had gone, Pennington should have said, to Illinois, or to Clarksville, or to any point, and was working at his trade. Who can say that this was not merely the expression of his opinion where Davis was, rather than a direct and positive assertion of the fact that Davis was in Illinois or Clarksville, or at any other place sboken of by the prisoner.

But great stress was laid upon the statements of Mr. Harrison, young Compton, and Mr. Vaughan, that Pennington had said at some of these times, when conversing on this subject, that he had seen Davis, and that he knew where he was, and that he would return. These statements, according to the rule of law which I have read, are entitled to no more consideration than the others, for it has been seen how easily the witness may misunderstand the prisoner, and thus pervert the meaning of what he really did say by the substitution of the language and ideas of the witness for that of the accused. It is as easy for the witness to have substituted the words, I have seen or know where he is, for I have heard, or believe I know where he is, as it was for the Judge in the forgery case, which I read to you from the book, who misstated the testimony of the witness when he said I am, instead of I know the drawer, the endorser, and the acceptor of the bill. Nothing would be more rational than to suppose that the witness in this case, when laboring under the excitement and prejudice, which none of them will deny entertaining towards the accused, would now take for positive and unqualified assertions, that which was intended by the prisoner for nothing more than a mere opinion or qualified conjecture or supposition. The language of the law is that such testimony under these circumstances, should be received with great caution, for it is at best frequently nothing more than the prejudiced, and erroneous conclusions of the witness, and if the rule should thus rigidly be applied in civil causes where mere property, mere dollars and cents are in controversy between man and man, how much more caution should be observed, how little weight and consideration should be attached to it by a Jury in a criminal cause, when the life and death of a fellow is suspended on their verdict. Statements, such as you have heard are, as the law says: "Fabricated easily, contradicted with difficulty, and as it is impossible to disprove them, and no person present, save the witness and the accused, for let it be observed that no two witnesses testify to any one of these conversions. How easily for the most conscientious and upright person when no one heard the conversations but himself, when he goes to relate them merely from memory, after a lapse of nearly twelve

months, to clothe in their own language the ideas of the accused and commit an error fraught with the most fatal consequences. It is to these reasons that the authorities regard testimony of this kind is of the flimsiest, weakest and most dangerous character."

But it is contended that the facts which were stated to have occurred at the muster ground, are sufficient to point Pennington as his murderer, and that it is his duty to explain them, and in that explanation show his innocence, and evert suspicion from him. And here, in my opinion, the attorney for the commonwealth has placed himself in a false position; he overlooked the principal contained in that beneficent to which I have already averted, that the accused is to be regarded as innocent until his guilt conclusively appears; and unless these facst and circumstances of which he speaks in themselves, unexplained by the accused, contain conclusive evidence of his guilt, you are bound to acquit him.

But let us examine them, and the law is applicable to them, and see how far they justify his conclusions. Penningon was at the muster ground about an hour and a half by sun, aceording to the statements of more than one witness, and staid all night at Mrs. McFaddens, which place he reached about two hours in the night, or shortly after the usual supper time; he had his horse put up and after setting up about an hour went to bed, and left next morning and went home, stopping on the way about two hours at West's shop, where he and McFadden parted. From the muster ground to the cave is upwards of six miles to take the most direct route thaough the woods, but by the road usually traveled it is fully seven; from the cave to Mrs. McFaddens, is six miles or more, and from the muster ground to Mrs. McFaddens, where he staid all night, it is at least six miles, From the muster grcund to the cave and from there to Mrs. McFaddens, all the ways which could be traveled pass over the roughest ground in the county of Christian The county is exceedingly hilly, and as the distance is at least twelve miles through the woods on a direct line, and more by the road. it is impossible that he could have traveled that distance from the time he left the muster till he reached wrs McFaddens, and delayed long enough to have commited the deed and robbed him, concealed the body in the manor described, and have disposed of Davi's hores. According to the testimony of Henderson he was seen to ride from the spring in the direction of the cnurch, but Mr. Gresham and M. Wicks tell you that by the church is the most usual and direct road to Mrs McFaddens, that at that point the rods diverge in all directions, and from thence you may go in the direction of the cave or to Mrs. McFaddeus. Gresham and Harkins went that way on their road home, a great portion of which was on the most direct route to the cave, and Hawkins lived about one-fourth of mile a immediotely beyond it; aleng the road usually traveled, numbers went, yet no one saw Pennington in that direction. Early in the day Pennington and Joseph McFadden swappen horses, and Pennington agreed to go home with

him; add Mrs. McFadden states that she had sent word to Cisney to tell Pennington to come to see her, that she wished him to go her security for the guardianship of her children.

Joseph McFadden was unwell and left the muster ground early, Abner Cooper reached Mrs. Mc Faddens, only an hour before Penning ton, put up the horse which Pennington rode, and heard him and his sister talking about his becoming her security. They all state that when he reached there they discovered nothing unusual in pennington's conduct or appearance. It will be observed too, that the statement of Henderson who testified that he saw Pennington and a man who he supposed to be Davis, leaving the spring in the direction of the church is unsupported by any other witness. There were then at that time at a large crowe of persons, yet no one saw them but Hendeson, and he acknowledges that he was drinking, and had take,n as he supposes, ten or a dozen drinks before tnis time. If this was his situation and it seems to bo admitted that his own statement about it is correct, for he is very much addicted to intoxication, what ever may be his intention, yet I am compelled to doubt his ability to distinguish one man from another at the distance he saw them when he had no cause for observing them. This is the only witness who saw Pennington and Davis together that day. M. Edwads and Mr. Gresham saw Pennington in company with other pereons, yet none of them can state that they saw Davis. Edwards recollects Sheffield, Cisney and John McFadden being with Pennington and a stronger, yet John McFadden whencalled on, states that he was not in their company at that place on that day, one or the other is mistaken. Mr. McLarning in his opening speech, in behalf of the commonwealth, said that this was a case depending purely upon circumstantial evidence, and these are in substance the circumstances upon which he relies for the conviction of the accused. There was a great array of witnesses examined on the part of the commonwealth, but these cirumstances which, I have recapitulated' are, in substance, all that can ce gleaned form the greet mass of their testimony, and furnish all the evidence to support the indictment against the accused. Sheffield and Cisney who are also suspected, one of whom has been indicted. were also at the muster. Col Robinson saw them pass his house going there, but no one tell what became of them after two hours by sun in the evening, or where they staid all night. These circumstances may furnish to minds easily aroused to suspicion some grounds of distrust against the prisoner, but they certainly amount to no more than a remote probabiliay, which in the eyes of the law cannot afford a just ground for conviction. In support of this position, I will read you from Starkie, 560.

"It is, however, to be remarked that where mere inconclusive probabilties concur, tne result, however the degree of probability may be increased by tne union, will still of an indefinite and inclusive nature; and hence it seems that in criminal cases the mere union of a limited

number of cicumstances, each of which is of an imperfect an inconclusive nature, cannot afford a just ground for conviction."

Agan, gentlemen, the same author, speaking of circumstnces, (for I connot so well express my views of this subject, as it is done in the words of the law) says: "It is essential to circumstantial proof, fiirst, that the carcumstances from which the conclusions are drawn should be futly etablishec. If the basis be unsound the superstructure cannt be secure. The party upon whom the burden of proof rests is bound to every single cirumstance which is essential to the conclusion in the same manner, and to the some extent as if the whole issue had rested upon the proof of cacl individual, and essential circumstance. Where the main circumstances rests on the testimony of a limited number of witnesses, the evidence can never be superior to the lowest grade of proof, and must frequently fall below it, for in addition to the question whether the wiuness were faithworthy, another question would arrise, that inference was correctly drown from the facts which he was supposed to have proved."

The same auther on page 572, when speaking on the subject of circumstantial evidence, plainly points out the character of the circumstances which are regarded as evidence and shows that circumstances which merely excite suspicion or raise a probability of guilt cannot be relied on as evidence, and how dangerous it would be to make coclusions drawn from such a source the basif of conviction.

"It is essntial tuat the circumstances should be of a conclusive nature and tendency. Evidence is always indefinite and inconclusive when it raises no more than a limited probability in favor of the fact as compared with some definite probability against it, whether the precise proposition can or cannot be ascertained. It is, on the other hand, of a conclusive nature and tendency when the probability in favor of the hypothesis exceeds all arithmetical or definite limits. Such evidence is always insufficient when assuming all proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whenever, thererefore, the evidence leaves it indifferent which of several hypotheses is true, or merely establishes some definite probability in favor of one rather than the other, such evidence cannot amount to proof, however great the probability may be. To hold that any finite degree of probability shall constitute adiquate p oof for the conviction of the offender, would in reality be to assert that out of some finite number of persons accused, an innocent man should be sacrificed for the sake of punishing the rest; which is inconsistent with the humane spirit of our laws. As it is with the suggestions of reason to justice. The maxim of law is, that "it is better that ninty-nine offenders should escape, than that one innocent man should be condemned." These are precepts based upon the most refined feelings of humanity, are in accordance with sound common sense and justice, and should have

great weight with any humane and intelligent jury. I have heard prosecuting attornies attempt to evade the force of these principles by a sort of legal demagoguism, denouncing this authority as a British book.

It is a work of the highest authority with the legal profession in this country, and from Mr. McLarning's general elevated and liberal course, I cannot anticipate that he will now descend to indulge in it. I will call your attention to a few more passages of law, which I regard as applying, with peculiar force, to the testimony which you have heard.

"In practice when it is certain that one of two individuals committed the offence charged but it is uncertain who, is the one or the other was the guilty agent, neither of them can be convicted."

Now, gentlemen, recur to the testimony in this case; recollect that Cisney, Sheffield, and others as well as the prisoner now suspected and arrested, and one of them now stands indicted for this same offence, can you say without a doubt that one or the other was certainly the guilty agent, even though you should conclude that some one of the parties was guilty?

"The principle extends to all cases where the ultimate tendency of the evidence is of an inconclusive nature, that is where admiting all to be proved which the evidence tends to prove; the guilt of the accused would be left either wholly uncertain or dependent upon some mere definite probability. Wherever the probability is of a definite and limited nature (whether in the proportion of one hundred to one, or of one thousand to one, or any other ratio as immaterial,) in cannot be safely made the ground of conviction; for to act upon it in any case would be to decide that, for the sake of convicting many criminals the life of one innocent man might be sacrificed." Such is the law of England, which rules in all their criminal trials, and is the source from which we derive the principles of our crimiual jurisprudence and it shows the degree of caution and vigilance which is used there in the appl'cation of this species of evidence; and in acting upon it here the just and humane rules of one of England's greatest judges cannot be too often repeated, TUTIUS SEMPER EST ERRARE IN ACQIETANDO, QUAM INPUNIENDO, EXPARTE MITERICORDIOE QUAM JUSTITIOE," it is always safer to err in acquitting than in punishing, on the part of mercy than on the part of justice. If such are the principles upon which the rules of that tyranical government administer the laws upon the trial of their subjects surely a less liberal and humane interpretation cannot be even to them here upon the trial of a citizen, if we act in accordance wgih the spirit of our republican institutions. But in is contended that the conduct of the accused after the discovery of the body of Davis, furnishes strong presumption of his guilt, that he fled from the country, and that after a proclamation by the gavernor offering reward for his apprehension, and his own conversations respecting his escape from this country, and his capture and the circumstances under which he was brought to trial, are in themselves cirsumstances from which guilt is to be inferred.

The excitement which pervaded this entire community after the prisoner was implicated by the statements of Cisney, and the well founded apprehesion which he could not fail to entertain that he would be hung upon the gallows whch had been there erected, without the formality of a trial, is of itself a sufficient refutation of such an argument.—The conversations which he had with the guardl and when he was interogated by the crowd who assembled at the jail to question him, and the answers ee gave resdecting his traels in Texas, shows that his only object was to beguile and amuse the crowd, and should not have the weight of a feather on this trial, The witnesses themselves, Mr. Dulin, Mr. west and Col. Hays, do not agree in their recollection of his statements about she route he pursued, the point at which he crossed the river, and Col., notwithstanding his general accuracy in relatiting facts from memory has acknowledged his mistakes, and has more than once corrected himslf. You will recollect that Mr. Myers and others have more than once corrected statements which they have made during the progress of this trial. No man doubts the integrity of these gentlemen, but I allude to the fact to show how little reliance should be placed uyon the conversation of the accused when intended to be used as testimony even when these conversations are detailed by the most honest and intlligent witnesses, from their mere recollection. The conduct of the accused is at best on uncertain test of guilt, and should be received wih great caution. For the books tell us that a weak, injudicious, but innocent person will some times take very undue means for his security when suspected of crime. A strong illustration of this is offered in the case related in tee first volume of Starkie on evidence page 52. A young lady who lived with her uncle was heard by the neighbors to cry out "good uncle do not kill me," dnd soon afterwards disappeared; and he qging suspected of having destroyed her on accoxnt of her large property, was required by the justice to produce her, and being unable to do it, procured another girl resemblng his niece and attempted to pass her off as such, but was detected in the fraud, condemed and executed, when it was afterwards ascertained that she was still living, having eloped with her lover. During the last fall a young man and a negro were indicted and tried in an adjoining county, charged with breaking a house and stealing a large sum of money. From the general bad character of the young man, added to the fact that some of the money was delivered up by him when the robbery was made public, and the previous good character of the negro, suspicion was fastened on the white man and the prevailing opinion among the citizens was that the circumstances plainly pointed out that he was guilty and the negro innocent. In the opinion of the jury either the one or the other must be guilty and the circumstances were greatly against the youth. But in their abundant caution both were acquitted; but a hort time afterwards the negro on his death bed, acknowledged his own guilt, and avowed the entire innocence of the youth who, with his

family, have been driven by public sentiment from the land of his birth. Then, gentlemn be cautious how you base your verdict upon merely circumstantial evidence. Have you not marked how treacherons are our memories, how deceptive, even the strongest chain of circumstances? You have seen mole hills magnified into mountains, and when a community is excited how "trifles light as air when blown upon by the breath of prejudice become comfirmation strong as Holy Writ.,'

Take the whole case as it has been presented to you, weigh all the circumstances, scrutinize well the testimony which you have heard and apply it to the law which I have read to you, and see whether the commonwealth has sustained the charge made in the indictment. It will not do to decide upon surmises, upon suspicions, nor probabilties, but conviction must be so strongly riveted upon your mindes that you cannot entertain a doubt, for if you have a reasonsble doubt the law requires you to acquit. The patient manner in which you have listened to the evidence and the colm deliberative bearing which have characterized you during this protracted trial, assures me that no extraneous influences, that no vindictive feelings will influence your verdict. The object of the law is not vengeance, and surely if there is a man on earth who cherishes in his bosom a single feeling of resentment against the unfortunrte individual before you, he will be disarmed by the scene before us.—The duty which you are about to discharge is one of the gravest importance to the prisoner, to your selves, and to your country. By your verdict you will consign one of your fellow men to an ignominious death or restore him to liberty and to the bosom of his family. The duty which has devolved upon me as his counsel I have discharged impartially, fearlessly, and to the best of my feeble ability. I have no doubt you will discharge yours with feelings of the most conscientious rectitude, with a sense of the strictest justice, but let justice be tempered with nercy. None can tell the anguish that wrings the heart of her who cungs to the sede of this wretched man, who is the morning of life united her destiny with his, and looked forward with eager anticipation of a life of happiness. The degradation of the husband will descend alike upon the wife and her children. Remember the humane injunciions of the law, if you err let it be on the side of mercy. I now commit the fate of my client in confidenc to your decision, and trust that your verdict will be such that your consciences in after time will approve.

CONCLUDING SPEECH OF MR. McLARNING.

GENTLEMEMEN OF THE JURY:

The almost lacerated condition of my lungs, admonishes me to be brief

in relpy. It is my duty to address you in conclusion. I do not do so because I am doubtful of what your verdict will be. The law and the evidence will be your guides in your solem n meditations, and final determination of this case. The law is too plain to need one word of comment. It is known to you, it is well known to every man, that murder is punishable with death, and this is a case of murder or nothing. Mr. Buckner said in the commencement of his speech, that there exists great excitement and much pertrubed feliing, in this community against the prisoner, and that the same feeling is even attempted to be extended to him, because he appears as council in defence of Pennington; and if he had been controled and influenced by the suggestions and advice of friends he would not have appeared as council for the defendant in this trial. Gentlemen, I can say for myself; I have no feelings of excitement or resentment against Pennington, no more than if he was dead—he is a poor fallen, prostrate man, over whelmed in guilt and infamy. No such feelings should exist in the human heart. But let him be as bad as he may be, let him have called down the heaviest penaliy of the law upon his guilty head, yet he is entitled to a fair and impartial trial by the laws of his country; and that country by its laws, secures to the vilest wretch, the right of being heard by himself and counsel when put upon his trial. I would rather a thousand such men as Pennington should escape unpunished, than that the laws of my country should be trampled under foot in this person. That sacred instrument, that blood bought inheritance, the constitution, transmitted to us by the worthies of the revolution, secures the accused the right to be heard by himseif and counsel; and when that right is denied or suspended, is open violation of the constitution. The barbarian code of Lynch law, cannot be brought to bear, or have a concurrence of jurisdiction, in criminal cases where I am prossecutor. There is less to be feared from the undue influence of counsel in the case of a man friendless and abandoned like Pennington, than any other. Such men as he are those that should have the full benefit af cousel to prevent their being convicted contrary to law. If he had no counsel, I would not prossecute him. I will not aid in no man's conviction contrary go law. I scorn Judge Lynce and his dastardly ruffian code, and I want none of his assistance. The halls of a court of justice are too sacred to be contaminated by his presence.

I honor and respect Mr. Buckner, for doing his duty as a lawyer, in the defense of Pennington, for manfully and indepndently defending the prisoner: and in so doing vindicating the constitution, vindicating his own rights, and vindicating the independence of the bar. What! when a poor wretch like Pennington, trodden down under foot, abandoned by God and man, comes to be tried, is he not to have the benefit of counsel? If there is such an ebullition of disorderly feeling as Mr. Buckner intimates, at present existing in the public mind, will calm down and subside when the storm passes away; and no prejudice can be harbered against him for defending Pennington. But may not

Mr. Buckner be mistaken? May it not only be a few excited individuals, and not the plblic sentiment of the people of this county to which he alludes? A whole county or a whole community may have great injustice done it by charging it with the misbehavior or erronious conduct of a few individuals.

Mr. Buckner said that some of my remarks he felt most keenly. I did not intend to hurt Mr Buckner's feelings by anything I said. Far woeld it be from me at any time to say anything that would be unpleasant to a gentleman that is so highly respected by me. If I said anything calculated in the least to touch his feelings, it was done unintentionally, and I regret it. But I must still say, that his speaking of my being tender of Cisney's character, was an inappropriate and uncalled for.

That excitement has existed, and still does exist agoinst the prisoner for the perpetration of his murder and robbery, I will not gainsay. It is natural that it should exist. It could not be otherwise in any community, unless the people were less than human, unless their sensabilities was callous as savages,or brute beasts. But I am bound to interpose my denial that any spirit of subordination to law has been manifested. I am aware that false reports hove gone abroad to the injury of our country, that its citizens in disregard to law, were disposed to take vengeance into their own hands, and inflict summary punishment upon criminals, without judge or jury. Such reports are utterly false and unfounded. There may be rash, weak men, who, under a state of excited feeling, would say that Pennington ought to be hung over the cave into which he had cast Davis's dead body; such men are to be found in every community. I repel with indignation, the slanderous charge, that such intentions and feelings ever did exist to any extent in Christian county. If such ever had any existence, they were confined to so few in number, that they dsd not amount even to a minority; for a minority would imply a division of sentiment amongst the people on the subject. The people—yes, the people never entertained or countenanced such intentions, If they were ever entertained, which I do not admit, it was only by a few isolated, thoughtless persons in an hour of great excitement, for whose conduct the people of Christian county should no more be held responsible, than they should be for the conduct of such men as Pennington himself. Mr. Buckner still speaks about this "Safety Society." He attempts to account for Pennington's flight, because he had reasons to fear personal violence from these men. The character of the men who composed this association, as I have already shown, forbids the idea that they would become the violators of the law. I care nothing about this society—I am not its advocate—I had nothing to do with it. But is there any thing reprehensible in men, as friends of law and order, assembling together, to aid each other in ferreting out offenders, and contributing their money to pursue and bring them back; and co-operating by their united exertions in having them apprehended and

brought to trial. This is all, so far as we have any information, that was ever intended to be done by this society.

Mr. Buckner, in attempting to overcome and do awy with the presumption that Pennington's flight is evidence of his guilt, says, that on the day after the dead body was found, Gordon, on the road six milds below Hopkinsville, told him all about; and he fled for fear of armed men. Told him all about what?—This much talked of society was not then formed, nor was it formed until weeks afterwards. He only told him that the dead body was found—that was all that Gordon could tell him, for he knew he was suspected of murder, and he must have known he would be apprehended. His guilty conscience told him then, that the evidence was full and complete as to his guilt. He well knew that he was in no danger till the dead body was found, but when that was found, he fled. Guilt pursued and he fled, and continued his flight—guilt still driving him on, worse than the lash of ten thousand scorpions, till he got beyond where the white man lives. Mr. Buckner says he fled in fear of armed men. If men were armed it was in aid of law—you may have seen armed men to day guarding him from the jail, but they are armed in aid of law and to prevent his escape. And so were the men armed in aid of law, who were in search of the murderer of Davis when his dead body was found. They were armed in a holy cause—it was to put down a lurking foe, in the midst of socsety, who had taken human life, not by punishing him with their own hands, but by captureing him, and securing him for jail. It was an honorable and meritorious, to arm for the purpose of sustaining the law and arresting an internal enemy who had struck a blow at the very vitals of society, as it would have been to have been armed to repel a savage invading foe. It was not armed men that he feared which caused his flight. It was a trial that he feared after the dead body was found.

Mr. Buckner said that I have argued this as though the salutary maxim of law had been reversed, that a man is always presumed to be guilty until his innocence is proved, and as the accused was bound to prove his innocence, or he would be presumed to be guilty. The gentleman does not attempt to controvert the competency of circumstantial testimony to warrant convictions in criminal cases; but in this case, because we say that there are facts established against him, wholly irreconcilable with his innocence, and which no one can explain but himself, and that they are conclusive evidence of his guilt unless explained by him; his counsel says, that, instead of perving his guilt I require him to prove his innocence. All the circumstances of time, place, motive, means, opportunity and conduct, both before and after the time Davis was killed, as established by the testimony, concur in pointing ont the accused as the perpetrator of the murder.

Pennington and Davis were seen leaving the muster ground together, going in the direction towards the csve—Davis went directly to the

cave; that fact cannot be questioned; for his dead body was found there. But where did Pnnington go? Where did he part with Davis, if he did not go with him to the cave? Whrt inducement had Davis to go to the cave, unless it was in the route to Pennington's father's, where he promised Davts to pay him some money that night? Where was Pennington from the time he left muster garund in the evening till hs got to Mrs. McFadden's two hours in the night? Because I contend that these circumstances are concusive evidence of his guilt, unless they are accounted for, and that they are within his own knowledge, and shouland could be explained by him if innocent. Mr. Buckner says that I red quire him to prove that he is not guilty. I contend, gentlemen, that they prove he is guilty, and that he is able to countervail such proof, if innocent, which he has not attempted to do.

The case read by Mr. Buckner, of the young girl who was heard to cry out "good uncle do not kill me"' can have no applcation in the trial of any case in this country. That case occurred many years ago in England, and the law has been held to be different every since, in that country, as well as in the United States. No man can be condemed now upon such testimony. The law now requires that the dead body shall be found before the person accused can be convicted. In that case the body was not found, in fact the girl was alive. If the body of Davis had not been found, Pennington could not be convicted in this case, as he seems well to have known, by his not attempting to conceal himself or to escape, although suspected, when the circumstances were as strong against him as they were afterwards. The other law that was read by the gentleman, I view as abstract and metaphysical, and shall not consume time in replying to it.

Mr. Buckner asks what law do I rely upon to convict a prisoner. I rely upon the law known to every man—I rely upon the law, that he who is guilty of murder shall suffr death; and, gentlemen, if you believe the prisoner killed Davis, all you have to do, is write upon the indictment that he is GUILTY.

The gentleman is mistaken in saying that no witness but Henderson proves that the prisoner and Davis were seen together at the muster Grissem states that he saw Pennington and Davis with two or three other men going off together, when he called Pennington back; and Davis is clearly identified as the man seen by Edwards with Pennington in the sapling timber in the evening.

Mr. Buckner says that, Pennington was not seen with Davis's horse after he was murdered, and that it ought to be shown on behalf of the prosecution what became of the horse. Can it be supposed for a moment, that Pennington shrewd and artful as he is, would be found in possession of the horse that Davis rode on his way home, to be the indubitable evidence of his guilt. His most direct way home from the cave, it is proved' was by Mrs. McFadden's, and it is not shown that he went there for any other purpose than to stay all night. It is not

proven that he transacted any business; it is not proven that he got the oil of spike; it is not proven that he made any agreement with Mrs. McFadden about becoming her security as guardian for her childred; It is not even proved that he got the word from Mrs. McFadden that she wanted to see him on that business. It is proved by Cooper that he told Causey to tell Pennington that Mrs McFadden wanted to see him. Causey is sworne with the other witnesses, but not examined, I therefore come to the conclusion that Causey never toled him that Mrs. McFadden wanted to see him. For what other purpose then conld he have gone to Mrs. McFadden's but that he was on his way home from the cave, and a convenient place to stay all night? He lived in nearly a direct opposite course from the muster ground, from that to Mrs. McFadden's and had he gone directly there from the muster, he would have gone from toward home, but from the cave it was on his route home to go by Mrs. McFaddens.

Mr. Buckner says, Pennington was a man of property, and that the amount of money that Divis had was too small an inducement for the prisoner to have killed him for it. That argument is of no weight. None but a man of wicked and depraved heart would kill another for his money—and no inference can be drawn from the smallness of the sum that Davis probably had, in favor of the prisoner. No sum, if he had been an honest man, would have been a sufficient inducement for him to have killed Davis. For no sum' nor for worlds, wouid he have harmed him. If it had been $75,000. instead of $75 or $150, that Davis had, he should not have killed him. Who can tell what motive is sufficient to induce a vicious and bad man to commit a crime? That robbery was the motive for killing Davis is clearly eatablished. He had money about his person, which his murderer got, and the property which he had left at home was taken possession of by Pennington, a few days after his disappearance. Pennington also had possession of his papers; he had possession of two promisory notes, belonging to Davis, one on Compton, and the other on Bradley, which he offered to transfer to Bell, after death? Take all these facts, take all this long chain of testimony in which there is not one thingwanting; take into consideration his falsehoods about Davis, when he learned he was suspected of the murder; his cocduct and flight after the body was found, and the mind is irresistibly and involuntarialy forced to the conclusion that he is guilty.

Gentlemen, the law says (Strrkey, vol. 1.) that "the usual cnnection between the conduct of a criminal agent and the supposition ofhis guilt, are too obvious a nature to be dwelt upon " and also "attempt to divert the course of inquiry or prevent investigation as to the cause of death, not unfrequently excite just cause of suspicion; above, all the restless anxiety of a mind conscious of guilt very frequently prompts the party to take measures for his security which evidently supply the strongest evidence of his guilt."

The numerous false and contradictory statements that he made about Davis being at diffent places, after he was murdered, were mad- to divert the course of inquiry, and to prevent investigation. His con scious guilt prompted him to tell these falsehoods, to ward off suspicion and to prevent search from being made fo the dead body, Conscious guilt made him take measures for his security by escaping from the country, when he heard the body was found. What motive could an innocent man have by such conduct? It was the restless anxiety of a mind conscious of guilt, that induced him to take such measures, he could only have allayed this lirtle black cloud of suspicion when i first began to arrise—if he could have only pacified this littie storm in time, lhe wouldhave been secure. Bat the clowd continued to increase and ower in darkness—the storm broke forth when the dead body was found, and he betook himself to flight for security. Guilt, GUILT, CONSCIOUS GUILT, was imprinted by his very footsteps upon the earth as he fled. The face of God's earth becomes polluted by such men. I have no resentment to indulge against Pennington—I have cause for none—it is the laws of my country that I am trying to vindicate and sustain, and I am as much convinced of his guilt, as I am of the death of Davis. Mr. Buckner in a sympathetic manner, has spoken of his wife, in whsch I must cordially join him. 'Tis a pity!—I pity her!—I pity her children!—pity that any woman should be united to so base a man. but gentleman of the jury, sympatny should not control your verdict in this case. Did Pennington have any sympathy for Simon Davis, when he sent his soul into eternity, and cost his body into that cave, whe he hoped he would forever be hidden from the eye of man, alas vain hope, murder will out. Never befare in our state has a jury had such an awfu weight of responsibility resting upon them. The spot selected for the murder of Davis only lends interest to the crime; murdered, as he was, in a lonely spot, at a time when honest men are at home with their familes: when the tired nation was sinking in her bed of rest, under the cover of darkness when murderes always stalks abroad, then it was that Pennington and his emisaries committed their wicked deed; for which if this jurs shnld acquit will haunt him through lite. Gentlemen, my duty is done, yours yet lies before you, My earnest prayer is, that you may be so ennobled as to discearge that duty so fully that society may have nothing to complain of at yons hands. Geutlemen the cose is with you.

Afterer the charge of the judge to the jury they retired and in a short time returned a verdict that Pennington was guilty of the murder of Davis, and fixed his punishment at "deathr"

He was hung near Hopkinsville, now in the city, in May., 1846. One of the post oak trees is still standing upon which an end of the beam rested, rnd to which he was hung. He walked upon the scaffold. Milton Clark who died only a few years ago tied the knot and sprang the trap that launched the soul of Pennington into the presence of the God who gave it.

THE END

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