

A BRIEF HISTORY
OF THE
LIFE TRIAL AND CONVICTION

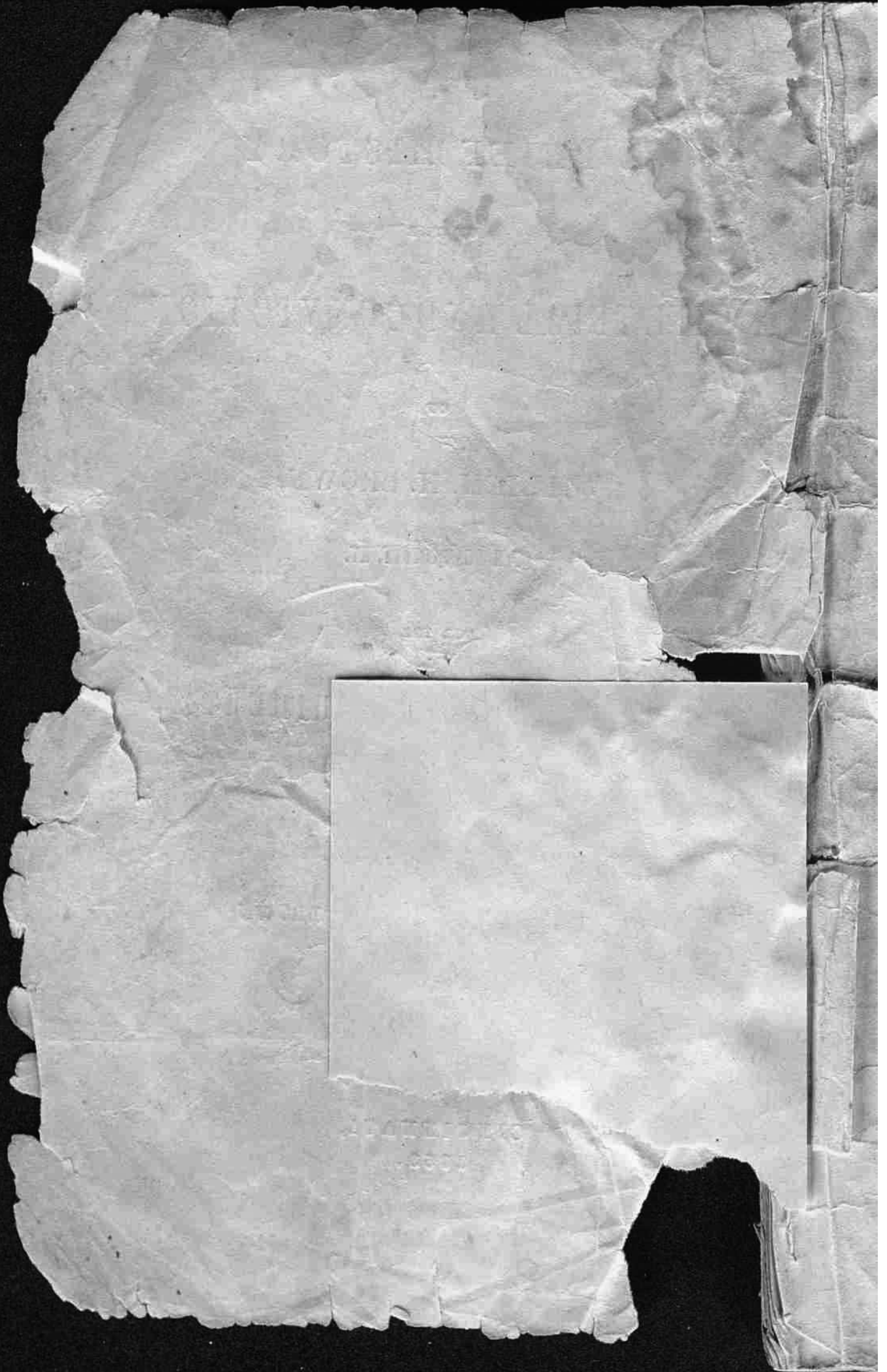
OF
WILLIAM. H. BROWN.

OF MORGAN COUNTY, KY.

FOR THE
MURDER OF MORRIS HIGERTY,
AN IRISH PEDDLER.

TOGETHER
WITH THE CONFESSION OF BROWN

CINCINNATI,
1853.



INTRODUCTION.

HAVING to atone for one of the greatest crimes against my fellow man, that of taking from him that precious boon, which God alone can give; and which no earthly power can restore back again, and that atonement, having to be made according to God's holy law, "life for life, and blood for blood." I have no right to complain, and do not, soon I am to suffer the penalty of an insulted and outraged law, upon the gallows; and as I have nothing now to bind me to earth, and nothing to hope in but the mercy of my Heavenly Father, I feel it due to myself, to my friends, and to the world, that I give a brief history of my life, together with a plain unvarnished statement of facts, with the steps that have led me on in rapid progression in crime, up to the time of my incarceration in this gloomy cell. And though my brief career has been marked by wickedness, dissipation and crime, at almost every step. Yet, I trust that the public, and especially that portion of it to whom this work is dedicated, will believe me honest in my recital, while I write not in full view of a dying hour, and a judgment day.

The motives that impel me to this course, is that others may take warning, and shun the fatal rocks upon which I have struck, and which have wrecked all my prospects of worldly happiness, and by which, I have brought shame and disgrace upon myself and friends; rendered my wife a widow, and my child a premature orphan. And I trust the hope, that my history will serve as a warning to parents, to give their children proper moral culture, by training them in the way they should go, that in after years they may not depart from it. And also to young men especially, that they flee from dissipation of every kind; for assuredly the end thereof is death. No sentiment ever uttered by the pen of Inspiration itself, was more emphatically true, than the declaration of the apostle when he said "the wages of sin is death," and while I call upon my fellow-men, to take warning by my sad fate. I hope they will attach no ignomy to my innocent wife and child, and that the community, though justly incensed against myself, will treat my wife, and especially my daughter, with that sympathy which their forlorn and unhappy condition requires.

And while I feel it due to myself, frankly to disclose my own crimes in the following pages, I feel the duty equally imperative upon

LIFE AND CONFESSION.

In giving a history of my short but eventful life. The desire with my readers will be but in accordance with nature, to know the place of my notoriety, my parentage, education, etc.

I was born in Morgan County, Ky., at my Fathers' residence, ten miles east of West Liberty, in August 1825. Making me now 28 years old. I am the eldest son of Elijah Brown. My Mother is the daughter of the Rev'd. William Coffee. My parents are in moderate circumstances, but of common respectability, so far as I know, and respectably connected on both my father and mothers side.

My father being in moderate circumstances, and but little attention being paid to education in the neighborhood he lives in, my education was greatly neglected. I acquired enough however, to enable me to read and write a little. As to moral or religious training at home, I had none. I was not taught that it was wrong to curse and swear, and it was but seldom that I heard the name of God made use of, only in blasphemy, or profanity. My father was in the daily habit of profanity; hence by easy steps I soon became an adept in the use of profane language. O, had my infant lips been taught to pray, when first they could disp a Saviour's name; how different now would have been my situation. But in the raising of my fathers family, so far as I know, God was not in all their thoughts; neither was fear before their eyes. No family altar erected around, which to cluster and worship; no family prayers; no kind parental voice to say; my son, this is the way of heliness, come let us walk in it. No dear reader, no; these were blessings and privileges to which I was an entire stranger. But like the wild asses colt, I grew to manhood, careless and unconcerned, growing more hardened and mature in crime every day. I never heard my father address a petition to the throne of grace, either for himself or any of his family. How greatly blessed are those children

who have praying parents, who daily hold them up to a throne of grace, on the wings of faith, such are not likely to be led captive by the devil, at his will.

I occasionally attended preaching and sometimes had some good impressions under the ministry of the word, but having no home teachings and no pious associates these impressions were like the morning cloud, and the early dew that passeth away.

Having accomplished the days of my minority, I left my father's house and soon became remarkably fond of drinking, gambling, shooting and passing counterfeit money, and I will here say in justice to my father, that, notwithstanding he never taught me the ways of righteousness, yet he never instructed or encouraged me in these things, and I presume but little dreamed of the sad fate to which my crimes and dissipation was madly rushing me on. Nothing worthy of note occurred in the history of my life from this period till about the 25th of December 1850, save that I still kept up my drinking, gambling and occasionally passing small sums of counterfeit money. About this time I married Margaret F. Williams, daughter of John Williams Esq. of this county, a gentleman of high standing and respectability. I then moved to a farm I owned upon the rock house fork of Licking river, and raised two crops there, but Mrs. Williams my mother-in-law dying, I moved back to my father-in-law's, Squire Williams and lived there till in December 1852.

I say that nothing very remarkable had occurred in the history of my life from the time I left my fathers house, up to this time, and yet it may be well to note the appliances, or ways and means by which I have been prepared and led on step by step, to the fatal hour that sealed my earthly doom.

The first proposal ever made to me to engage in dealing in counterfeit money to any great extent, was made to me in West Liberty, by James A. Day, a citizen of Morgan County, living in the north side of the county, near Triplett. He urged me to take from him whatever amount I wished and when it was disposed of, pay him half the amount. I think it is likely if it had been paper currency I would have taken some, but it was counterfeit silver, and I was afraid of it and did not take any.

After this I had various propositions to deal in counterfeit money from men not residents of this State. One of these offers was made by two men from the State of Ohio, whose names were Edward Williams, and Jonathan Mays. These

men stayed several days at my fathers, and run horses, they offered me any amount I wanted, but I took none from them. I payed Mays ten dollars to learn me the marks on cards, he learned me well, and from him I learned more about cards than ever I learned from any one else. While these men were in West Liberty Mays played with two men in that place who were celebrated gamblers, but they won off him. They then went to Bloomington, 12 miles east of West Liberty, myself going along. We there played with a young doctor living at that place, Mays won off him \$16,00, and I won from 14 to 18 dollars.

Williams who came with Mays slipped off from the tavern where he boarded and never paid his bill. Mays remained several weeks, myself in his company the most of the time drinking and gambling with any and all who would engage with us. I was always ready to gamble with any one and it was to me a source of the highest gratification to get around the card table, for I had learned the art so well I was almost sure to win. About this time I commenced receiving sums of counterfeit money from citizens of this county, these sums it is true were not large at first, but they served to lead me on step by step to larger crimes. I began to conclude that I was pretty expert in the business, and went into it upon a larger scale. I had not the nerve, however, to offer to pass ~~it~~ but first preparing myself by getting under the influence of liquor. When thus prepared I became one of the foremost men at the business, and my heart delighted in it, but it was under the influence of whiskey, that all pervading destroyer.

There was a man who professed to be a very particular friend of mine, a great gambler (and I looked on all gamblers as friends,) by the name of Buck Prater, then a resident of this, but now of Greenup county, who led me from vice to vice, and from crime to crime, until I was completely hardened and thought I was hard to beat, at either gambling or counterfeiting.

From the year 1848 I had another particular friend of the same stamp, William R. Holbrooks, living near Bloomington. He professed great friendship for me, and always furnished me with any amount of counterfeit money I wanted. I have received a great deal of this kind of money from him, I also received a great deal of spurious gold and silver from him for which I paid him thirty cents to the dollar, and then

this professed friend of mine led me on in like manner as did Buck Prater.

And I will take the liberty here of dropping a word of counsel and admonition to my particular friends, Prater and Holbrooks, also my other friends of like stamp, to take warning by me, and at once, and forever break off from these unlawful and soul destroying practices, lest they share my sad and wretched fate, confined in a loathesome gloomy cell loaded with chains ironed fast to the floor, and though the cell is small indeed yet not the liberty of half this small room, the doors made doubly secure by bolts and bars, and then a constant guard of nine or ten men around my prison night and day, firing off their muskets evening and morning over and around my dungeon home. While I am writing in these iron chains without either chair or table, having the bitter reflection that you and just such other friends as you, by your counsels brought me here, and have the bitter reflection that I am under the sentence of death, and that justly, and in a few days am to be suspended between the heavens and the earth, a spectacle for men to gaze upon, and take warning by, and should you have the nerve to stand by and see me suffer the penalty of the law, remember you led me on, and that sooner or later (unless you repent and reform,) the very cup which you have so remorselessly placed to my lips, you yourselves must drink to the very dregs, and should it be your unhappy lots to take my position in this dreary dungeon, then you will have ample time for reflection.

After being thus led on by these, my professed friends, I often visited Bloomington for the express purpose of drinking, gambling, fighting and passing counterfeit money, all of which I greatly delighted in.

During this period of my career, I formed an acquaintance with a man by the name of Fairchilds, who resides sometimes in Johnson and sometimes in either Brethet or Perry; he is a very bad man, and perhaps the blackest blackleg now in the mountains of Kentucky. He makes a regular business of passing counterfeit money, robbing and stealing horses. He is the same man who attempted some year or two ago to murder Robert D. Ulm, of this county, on the waters of Caney, knocking him down, leaving him for dead and rifling his pockets of the sum of four dollars. He is, certainly, a great scoundrel, and I trust the community will keep a sharp eye upon him and bring him to justice, for he is too vile a man to be permitted to run at large. I know not his whereabouts at

the present time; the last time I heard from him he was going down the Big Sandy river in a canoe with a set of blacksmith's tools which he had stolen.

A young man by the name of Morris lived about Bloomington a short time in the fall of 1852. I formed a slight acquaintance with him and played cards with him several times; but about the 12th of December he was suddenly missing; and I am aware that after the fatal tragedy with the peddler, and my arrest for the same, suspicion fell on me, that I had killed poor Morris, or knew who did do it,—this charge I am innocent of. I did not kill him, nor was nor was I privy to his death in any shape whatever; but if he was murdered I have no doubt he received his doom at the hands of my old friend Holbrooks, who, I entertain no doubt, would do such a deed if a suitable opportunity offered. After my committal to this prison, my great and only object was to get out: I cared but little how or by what means so I could succeed in any way, hence my old and faithful friend, Holbrooks, made a proposition to my father that if I would give him sixty dollars, he would swear that Morris told him that he (Morris) had robbed the peddler, and, farther, he was to get two men in Blair to swear that Morris stayed at one of their houses on the night of the 12th of December last and stated that he had robbed an Irish peddler on the head of Paint on the Tuesday preceding. This he said he could get these two men to swear, or anything else he wished them to. On this I paid him a horse worth fifty or sixty dollars, but he wholly failed in the hour of need; and it will be remembered that Billy never could be got into Court to testify though he took the horse to do it. I wish my friends to collect the value of the horse from him and apply it either to the payment of my just debts or the benefit of my child.

But I will now give a history in detail, as brief as the nature of the case will admit, of the perpetration of the awful crime for which I am now under sentence of death. On the night of the 5th of December, 1852 I was at a corn husking, at the widow Jane William's where I learned that there was an Irish pedlar in the neighborhood who had a considerable amount of money. James H. Williams told me he seen him have six or seven hundred dollars at least; he said he saw three one hundred dollar bills and several fifty dollar bills. After this conversation with James H. Williams and Hayden Williams made a proposal to me, that if I would go with him and take my gun he would kill the peddler and give me fifty

dollars of the money. I do not remember what answer I made him; but I did not have any idea of doing it myself. Thus you see the first proposition of murder and robbery was not made by me, as proved on my trial, but was made to me and that by one of the principal witnesses against me.

The William's all talked about the peddler and his money much more than I did. James H. and Hayden Williams both said they did not think it would be any harm to rob the peddler as he could never have that much money unless he had got it in the same way by robbing some one else. Anderson Williams then said it was no harm to rob any body who followed robbing for it was a business that no honest man would follow. James Lacey then stated that he had seen the same pedler on Sunday, the day previous, at Silas Nichels, and that he said he was afraid to travel on, lest he should be robbed and so lay by on Sunday; but that on Monday he concluded to go his way, and it was on Monday previous to the night of corn shucking that the peddler stopped at James H. William's and sold a table linen, when Williams said he had seen his money, and it was on that night the peddler stayed at William Williams all night. We shucked corn till about eleven o'clock that night, during which time there was a good deal of liquor drank and nearly all the company was drunk, and pretty much the whole time the pedler and his money was the theme of conversation by some, and I was drunk myself. The conversation of the company being almost entirely about the pedler and his money, robbing him, etc., I was finally, in my drunken state, tempted to engage in the dreadful deed. After we left the corn shucking several of us concluded to go hunting, but did not proceed far till we stoped, built up a fire, and stayed and played cards till nearly day. Hayden Williams, James H. Williams, Andrew Williams and myself were the company, and also some others. While at this fire we drank a quart of liquor, which kept us all drunk.

Hayden Williams stated on oath on my trial that while we were at this fire, I plucked him and took him to one side, and proposed to him to go with me and kill the peddler, this is not true. The facts are these, he plucked me to one side, and then, for the second time proposed to me for us to go and kill and rob the peddler, it was then we made the arrangement he was to go with me, I was to shoot him and we were to divide the profits, Hayden said if it came up he would swear me clear, so that I never would suffer by it; but he got so drunk that he was not able to go, and I am satisfied that his

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extreme intoxication disabling him from going is the only reason that he was not fully an accomplice in the deed and stood equally guilty with myself in the awful crime which I must soon expiate upon the gallows.

I then determined to have all the money myself, took a fresh charge of liquor, filled my bottle at Harvey Williams, and started for the spot I intended to way lay him at, I went past Wm. Williams to see if I could see anything of him. Not seeing him however, I thought about going in and trading some with him, and let him have a counterfeit ten dollar bill, as Harvey Williams desired me to do, but I did not do it. I then went on to some old waste house on the road, and stopped there for a short time, and thought it possible he might have passed on.

I then went on up the creek, from the old house, near to the foot of the hill, and shot my gun off into a beach tree on the right hand side of the road, threw the flint out of my gun, and resolved I would not kill the peddler. I went on some distance to a deep hole in the creek, with the intention of throwing my gun in, but then it appeared to me that whisky had given the devil full power over me, and that a burden was ~~pressing~~ ^{weighing} me that I could not cast off. I then went back, hunted and found my flint and reloaded my gun, and went on my way till I arrived at the contemplated spot, which was early in the morning. I took my stand about thirty yards from the road on the left hand side, behind a chestnut root, having much liquor in me, and having been up drinking and card playing during the previous night, I soon became stupid and lay down and fell asleep, how long I slept I know not, but think it was but a short time. I was suddenly awoke by a Pheasant flying immediately over me, which probably was scared up by the peddler passing along. I raised up, and just as I raised I saw the peddler, he had got rather passed me, but had turned round so his breast was fair to me, it is probable that he halted and turned around to look after his Pheasant. I fired just as he seemed to be in the act of turning to start on again. I think the ball must have struck him about the left nipple, he appeared to know he was shot, he went down quite easy, he carried his budget of table linens upon a stick, and they fell back at the crack of the gun, I do not think he made any noise when he fell, I left my gun where I was setting and run across a steep hollow to where he fell, when I got to him he was entirely dead, I laid hold of him and dragged him down a very steep bank into a hollow, and then searched his

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pockets and took from him what money I could find. I first searched his pantaloons pockets and found in them three pieces of silver and a ninety five cent piece, one twenty cent piece, and one ten cent piece, this was all the silver I found about him. I then searched his vest pockets and there found a forty dollar bill upon the State bank of Ohio, some five dollar bills, and the ballance was one and two dollar bills on various banks, there was one two dollar bill counterfeit, one two dollar bill on a broken bank, this was all the money I got from him, making forty one dollars, and twenty five cents, and no more. I found no pocket book. I was with him but a short time. I covered him up slightly with some brush I found hard by. I then went to my gun, where I had left her, and started on my way. Not knowing well where and being full of liquor, I soon became bewildered, not knowing where I was, and the first place I found myself was near Elisha Smith's on Paint, perhaps near two miles from the place of the fatal catastrophe, and I did not know then where I was till I met Mrs. Smith, and told her I was lost, and she put me on the right way, and I went home that same evening. I stayed about home and in the neighborhood, some nine or ten days after this time, still drinking and gambling. ~~W~~ expiration of that time, I concluded to go to Greenup County, in this state, to meet with some of my old friends in vice and crime. I intended to go to Portsmouth Ohio, and lay in a good supply of marked cards, that I might be enabled to continue my gambling operations upon a much larger and more improved scale.

But I will digress a little here from the onward thread of my narrative, and go back a little in my history, for there is some things not yet fully revealed, that press upon me, and I desire to make a clean breast, and clear my own conscience, be the consequences what they may. And now in justice to myself and others, and with that honest candor, that ought to be exercised by one standing on the breaking verge of eternity, I must and will disclose all, and though this course may subject my name and my memory to the bitter curses and execrations of those upon whom censure may fall, yet the truth ought to come, and shall come, and then my duty in the matter is discharged. Notwithstanding, Hayden, Williams and myself was to do the deed, yet it was a made up matter with five of us, and well understood by all the other three, in addition to Hayden and myself was Harvy Williams, Anderson Williams and Dick Williams, and if they had been arrested,

and the whole facts known to the court and jury, so that justice might be equally meted out, there would be five of us hung together, for they done all they could do in forwarding the shocking business of the peddlers murder.

Harvy Williams was fully resolved to have some of the money at least, and if I had not killed the peddler they certainly would. Various plans were suggested among us all for getting the peddler's money. Harvy at one time advised Hayden and me to black ourselves and waylay the road where the peddler would pass, spring out and knock him down, rob him of his money and let him go, and if the blow failed to kill him why then his life would be spared, and we could wash ourselves and never be suspected. All these things were freely talked over among us all. Harvy, Dick, and Anderson all went together to the haystack where the money had been deposited and searched for it, and had they have found a snug sum of money as they supposed they would, they never would have been witnesses against me; no, never, never; but they found no money, and they thought I had taken the advantage of them and that after they had assisted in forming the plans, I had got the money myself and failed to make a fair divide with them. If the peddler had more money than forty-one dollars and twenty-five cents, some one else got it and not me and if he had the amount of money Harvy swore he had, I have strong reasons to believe Harvy and Dick got it. If not where did it go; I did not get it, and some one surely did, and the evidence sworn to upon my trial that I said I got eight hundred and ninety dollars from the peddler is not true; I never made that statement, and that was sworn to, no doubt, to screen others from suspicion. The evidence was true that I said something about the hay stack being my bank, for I did deposite the most of the money there which I got from the peddler, but the amount stated was untrue. These men with whom made the arrangement, about this horrid affair, I entertain no doubt, were well satisfied I had done the deed, and you will bear in mind it was done on Tuesday, the 7th of the month; but I made no division of the money, hence on Friday the 10th of the month, they went out on the pretext of deer hunting, but, I have but little doubt, their real object was to find the murdered man, and, I have just as little doubt they did find him and make a much more thorough search of his person for money than I had done; for at the time I searched him I was drunk, greatly excited, and alarmed and did no wait long to search, and if he had the hundred dollar bil

and fifty dollar bills Harvy swore he had, just as certainly do I believe they got them.

I am the more confirmed in this belief, from the fact that they were the first to get up the suspicion against me after they came back the first time.

The day they met to look for the peddler, these men as I am informed, seemed at no loss where to go to find him, clearly showing they knew before where he was, and fully demonstrating to my mind they had found his whereabouts before, and if he had the money swore to they got it. Had I have believed the Williams' would have sworn as they did, I never would have been taken, for I had ample time and opportunity to get away and could easily have done it, but I knew these men to be equally guilty with me so far as motive and intention was concerned, true their hands were not stained with his blood, but in their hearts they committed the crime. They were my relations, and as I looked upon them to be deeply and inextricably involved in the same crime, I did not believe they would swear against me, but on the other hand, supposed they would keep their promise and swear me clear.

I will now return and take up the thread of my narrative again. When I started from home on my Greenup and Portsmouth trip it was not to get out of the way, but for the purpose before stated. I fully intended coming back, for I believed if the matter ever come out my accomplices would swear me clear. From the time I killed the peddler up to this time, I had not been back to make a better search for the large amount of money, Harvy Williams induced me to believe he had, so I concluded to go by and make a more thorough search, that probably it might be in his satchell with his table linen; I did not then think about taking these linens.

But making the search and finding no more money, and no pocket book, I then resolved to take the linens which I accordingly did, and disposed of them pretty much as proven on my trial. I went on to Portsmouth in Ohio, and laid in a good supply of cards of the kind I desired, and was on my way home, when I was met by my two brothers, James and Alfred at my aunts (the widow Coffe) in Greenup, and they told me that I was accused of killing the peddler.

My wife sent me a special message by my brothers to come home and stand my trial. Little did she suspect that my hands were stained with the blood of my fellow man. Her father and friends have accused her of having a knowledge of

my guilt, This is an unjust suspicion, she knew nothing of it, I carefully concealed it from her, if she had known it she never would have desired me to return back here, and she never believed a word of it until I had employed counsel and disclosed the whole facts to my counsel, and he disclosed to her my guilt, to her utmost surprise and dismay, and I now hope my or rather her relations will no longer attach any blame to her on that score.

It was on Tuesday night the 21st of December that my brothers met me at my aunt Coffees. On the next morning before or near day light the civil officers of Morgan county came, and called for me, to whom I at once surrendered myself. They took me to West Liberty, the county seat of Morgan county, having hand cuffs put upon me on the way; and I will here state, strange as it may seem, such was my infatuation, and such my thirst for gambling; that, with all these untoward circumstances around me, and a load of guilt pressing upon me, I was ready and anxious to gamble with any one who would gamble with me; and what is still more strange, there were some ready to, and did gamble with me, while I was under arrest awaiting the Court of inquiry, though in irons surrounded by a guard, charged and that justly with murder and highway robbery. My chains clanking at every throw of the cards, yet there was men under all these circumstances to play with me. Cards and whisky are cursing and leading to swift destruction many, yes, very many young men of promise of Morgan. The Court of Inquiry was held and I was committed for further trial and not permitted to give bail; if I had been I would have given it and fled. I employed able counsel, Wm. H. Burns, N. P., Reed and Andrew W. Trombo, and was satisfied that they would do every thing for my acquittal that could be done consistent with the principles of honor. Mr. Burns was my leading counsel, and to him I made my disclosures about the whole matter. The Court of Inquiry being over I was remanded to prison and chained around one ankle to the floor. The chain was fastened around my ankle by what was called the horse lock, which fastens by a screw in a tube. I got hold of a twenty-penny-nail, heated the end of it in a little coal stove in the jail and made a key out it, with which I could open the lock with greater facility than even the jailor himself. With this key I contemplated effecting my escape. True there was a guard but they were frequently absent. Sometime in Februrary, Mr. Cartmel who was then sub-jailor,

(the proper jailor being from home) one evening about dusk came up with supper; I told him I wanted some fresh water as I had not had any since the morning before. He appeared mad, as he very often did, complained a good deal of the trouble, he however went down after the water, leaving the trap door open, but closing one of the outside doors after him; it being dusk and no guard near, it was as I thought a favorable time to escape, I had my chain off, I went down into the lower room, and when he came back he threw the lower doors open, and left them open and passed up the gang way to the upper floor, where I had been confined, as he got to the top of the steps, I passed out of the jail. I intended pulling the door to after me and fastening it, and thus leave Billy as my substitute for a time at least, but providence seemed to frown upon all my plans, and thus verify the declaration of inspiration, that "though hand join in hand the wicked shall not go unpunished," for scarcely had I cleared the door till Cartmel was close at my heels, I turned the corner of the jail and jumped three fences, in quick succession, the jailor in close pursuit after me hollowing as though he would rend the very heavens with his shrieks, to obtain aid in the chase, and several did run to the rescue, I ran about five hundred yards was closely pursued, and finally give out, so I halted till my pursuers came up, and I formally delivered myself into their hands and went back with them to my dungeon again, where I was ironed a fresh with manacles to my wrists, and a heavy but short chain to each leg, but still I could not give up the idea of escape by some means or other.

And it was about this time a fresh hope of escape grew up in my breast, by some propositions being made to me by the commonwealth's Attorney for the county, James J. Easley, he come up into the jail to see me, and proposed to me if I would give him a fee of two hundred and fifty dollars, in notes I held upon my father and brothers for land I had sold them, that he would fix a plan to let me out of the jail. He said he would procure the keys of the jail, and get the guard into his office to playing cards, while he would procure some one to take the keys, open the doors and let me out, and thus effect my escape; then if he failed in this attempt, he was to decoy the guard to play cards in his office, as in the first instance, and he would employ three men to mount the jail, tear off a portion of the roof at the chimney, and take me out in that way; he only give me the name of one of the men that he was to get to do this work; the name he did give was

that of Clabourn Stacy, he did not tell me who the other two was; the sum he said he would have to pay them for their services was twenty five dollars each; he sent himself for the notes, and they were brought, but fortunately never got into his possession; I had doubts and fears on mature reflection of Easley's integrity, and the honesty of his intentions to me, true to get out and make my escape was the leading and almost only thought of my breast, but then Easley had deceived me before, and proved treacherous, and if he had been unfaithful in that which was less, it was natural for me to conclude he would be unfaithful in that which was greater. He had just after my arrest and before the court of inquiry was held in my case, proposed to me, through my friends, to secure him a fee of forty dollars, and send for Esq. David M. Cooper, and Esq. Archibald Prater, and with twenty five dollars of the money, he could bribe them, have them to sit upon the court of inquiry, and allow me to give bail, and fix the sum so low that I could without difficulty give it, and thus make my escape. But the matter got out that Easley was tampering with me, and acting in bad faith as a public officer, and I learned that the citizens of this place, told him that if he did not prosecute me with all the ability he possessed, and give a promise to that effect they would employ other counsel, and denounce his perfidy and corruption in the most public manner. Easley then turned against me and prosecuted me with all the energy of which he was capable, but had my friends been sufficiently vigilant and diligent in attending to the mayor, and made the motive power sufficiently strong, I think he would not have had me convicted, if he could have helped it. These things all came up in array before my mind, and though I permitted him to send for the notes, I had my misgivings about letting him get his clutches upon them. Hence, I concluded to send for Mr. Burns, who was my leading counsel, and upon whose judgment I relied most implicitly, and spread the whole matter before him, and got his counsel. When I disclosed the matter to him he promptly told me, if I entered into any such arrangements, he would abandon my case, and have no more to do with it, and I might employ other counsel, then fully resolved to abandon the project, for I knew without his aid I had no possible chance of acquittal, and here I will say, that I am convicted and have to suffer. I have no reflection against my counsel, I was ably defended, as much so as it was possible for any man to do, with the amount of evidence against me, and here tender him my thanks for the zealous and powerful de-

fence he made for me, his defence was worthy of a better cause, and I desire that the world shall see his powerful and eloquent argument in my behalf, that they may properly appreciate the merits of that man, and afford him that patronage in his profession, that his high order of talents so richly deserves, and for this reason, I have procured a copy of his defence, and will cause it to be appended to this work.

I think it is highly probable that if my counsel could have got a change of venue, I would have been acquitted. Indeed I feel sure if my trial had come off in Paintville, Johnson County, that I should have been acquitted, but I attach no blame whatever to my counsel for not getting this change, for I am well satisfied Mr. Burns, my leading counsel, done all he could consistently do for my acquittal. There has been a great deal said about Osburn, the man that hung the jury on my trial, at the April term of the circuit court. I have no doubt public opinion has wronged that man, I learn there was a very strong impression in the community that he was bribed to hang the jury, this I do not believe, if he was I never knew or heard anything of it.

I desire briefly to advert to some of the evidence against me, not indeed with any view of palliating my own wrongs, for I am free to admit they are too great to admit of palliation. No, nor yet to criminate others for this could do me no possible good, but for the sole and only purpose of letting the naked facts appear just as they really did exist. Some of the witnesses may really have been honestly mistaken, while some others I am certain swore what they knew to be false, and done it with mallice aforethought.

On my first trial, Ambrose Howerton swore that when I started from Harvy Williams, that I said I intended to kill the peddler, on my last trial, he was lying on the bed and thought he was asleep when I started from Harvys, both could not be true, and it shows that men ought to swear with caution, especially when they have to swear more than once about the same thing.

Preston H. Dyer swore at my trial in the spring that I said I would kill the peddler at a flat near where he was killed. at my last trial he did not swear that, but swore that I said I would give a load of powder and lead for the peddlers money, this is untrue. Dyer got so drunk he left the corn pile and went to the house before we were half done shucking corn, and he was not at the fire at all when we were playing cards.

Ned Pelfry swore at my trial in the spring, that there was a

pair of bleached table linens spread out on the bed at his mother's house, when he came in from work, and then at my last trial he swore they were rolled up, and he did not see them at all; both could not be true, and he was certainly wrong one of the times.

Milton Adams swore that he saw me buy a vest from Dr. H. Daily at Bloomington on the 9th of December last and pay him the money for the same. This is not true, and if any one will ask Dr. Daily about the matter he will tell them I never bought a vest of him in my life, neither did I of any one else on that day. Dr. Daily swore the truth in my case and nothing but the truth; so did William A. Kendall. Baker, from Greenup county, I believe swore nothing but the truth.

Wm. Ryly swore a positive falsehood when he stated on his oath that he saw me with a fifty dollar bill at his house in Greenup. This was not true, for I had no bill of a larger denomination than ten dollars, and I believe he swore this falsehood with malice aforethought. I have no prejudice against Mr. Ryly, but I look upon him as a bad man and would warn the community to be on their guard in reference to him for I feel afraid he will swear falsely or do any thing else that a bad heart can prompt a man to do.

It will sure be remembered by many, Anderson Williams swore on my trial, last Spring that he would not have turned out to hunt the peddler but he thought suspicion might fall upon his cousin, William Williams, this, I believe was every word true; but it went far to confirm the impression on my mind that he then knew the very spot where the peddler lay and that this information was all obtained on the Friday of the pretended deer hunt. I shall say nothing more of the evidence. Some of it was wholly irrelevant to the case but with the exceptions I have hinted at I admit the truth of the evidence against me, and also admit it was overwhelming in its character. I do not complain of the attorneys for the commonwealth who prosecuted me. They did it with zeal and great ability, and, perhaps, with as much deference to my feelings as any one else would. I here say to Col. Chiles and Capt. Lacey that I die without malice or ill feeling in my heart toward either of them.

Of the jury who convicted me I have no complaint to make, for the proof was so overwhelming in its character that they could not do otherwise than find a verdict of guilty.

The names of the Jury were Aaron Crosswhite, Isaiah

Wilson, Reece C. Muray, Joseph Utterback, William W. Elam, Edward S. Rose, James Gibbs, Bird Ivson, Gideon Howard, A. Phillips, A. Swango, and Geo. D. Brown.

Judge More presided, with impartiality, and in delivering the sentence of the law was as tender of my feelings as the nature of the case would admit of. He treated me throughout the trial with humanity; and with him I am perfectly satisfied.

Since my confinement I have had several jailors, Capt. Farish was the regular Jailor. While he kept the jail he treated me very well and I have no complaint to make of him; he was kind and accommodating to me. Wm. H. Cartmel was jailor several months; he done tolerably well, but I thought he might have done better. H. J. Spradlin was jailor for a while; he also treated me very well. About the 1st of Sept. last, Wm. Ward was made jailor. Since then I have fared extremely well, better by far than I had done since my confinement. My meals, since he has been jailor have come regularly three times a day, in good order and good vituals, and plenty of it. He has kept me in fires and fresh water, treated me with humanity and kindness, and took a great deal of pains to make me comfortable and easy. I here tender him my unfeigned thanks for his kind and humane treatment and I trust he will not only have the reward of an approving conscience, and the approbation of his fellow men, but that he will be rewarded in heaven for it.

The guard has generally treated me well. Some of them preached my funeral sermon two or three times, which greatly afflicted my feelings. I thought it was inhuman and high-handed profanity, that ought not to be tolerated in civilized society. But I bore it as best I could, and I now freely forgive them for it, hoping their thoughtlessness, and want of reverence for Divine things may never lead them in the way that I have traveled.

And as I am about to quit the walks of life, and enter into an unknown eternity, I feel it a duty I owe to the world, and more especially to the law-abiding and order-loving citizens of the community, that I bring to light and expose, so far as may be, those lawless and dangerous men engaged in making and passing counterfeit money; for they are dangerous men in community. Not only steeped in the deepest dye of human depravity and guilt themselves and rushing with the rapidity of thought from crime to crime, but they are leading others swiftly into the vortex of ruin. Young men of talents and

Wm. H. Cartmel

promise, who bid fair to be an honor to church and state; to stand high in the annals of fame, are taken in by this lawless band of desperadoes, ruined forever in time and eternity, and many of them must ultimately share the sad fate which is soon to be mine.

I am well aware that in making the disclosures I am about to make, that they who are exposed will cry with one harmonious voice that my disclosures are false, but the public have long had an eye upon many of them, and know that that they have long been in the constant habit of passing counterfeit money.

I cherish neither malice nor ill will against any of these men and nothing now could induce me to do them wrong. Their consciences will bear me witness that I speak the truth and lie not, and that I speak that which I do know and testify to that which I have seen, and it is only from a strong sense of duty to the world I am about to leave, and a sincere desire that this clan may be broken up that I make these disclosures. There are several men in this county engaged in making and passing counterfeit gold and silver. Absalom Adkins on the head waters of the Elk Fork of Licking river, owns the fixtures and apparatus for coining it. They obtain the gold at Portsmouth, Ohio. Harvy Farrin and Thornton Williams are engaged in making it and are considered pretty good workmen. I have seen Thornton with a great deal of it. he uses much of it in gambling; he also deals pretty largely in counterfeit bank notes, and it is to me a matter of great surprise that he has never been caught, for it is a matter well known to many in this community that he has lots of counterfeit money by him.

Richard Whit Jr. and Richard Whit Sr., are dealers in counterfeit money. So is also Jo. Adkins, of the same neighborhood; Devil Jo. as he is usually styled. Old Dick Whit, on Sandy, is engaged in the manufacture of gold and silver. Old Dave Hambleton is engaged in making counterfeit money; he makes a great amount of it, and spreads all along the Big Sandy and the adjacent country; he is one of the main hands at making counterfeit bank bills in this section of country. Mark Williams, the great horse racer, is a leading hand at both making and passing it. He is one of the oldest at it in this part of the State, and is considered quite smart and expert at it.

Old Bill Spurlock, on Paint, is another of the old and long tried hands at the business, he is making and passing it all the

time, his manufactory is about five miles from his house in the cliffs, and perhaps few men have engaged in it to the same extent, and escaped detection. It was dealing in Mark Williams money, through Wm. R. Holbrooks, that was one of the great means of bringing me to my dismal end.

There is a band of counterfeiters, many of whom lives on Ball's Fork, a tributary stream of the Kentucky river. They are generally known as the Moody Mullions and Elmons Band. They make it upon quite a large scale, and have many hands employed in the business, and men come from all directions, hundred of miles to deal with these men in their spurious currency.

Moody is the principal, or one of the principle men at the business, though there is a considerable company of them, but Moody is considered the most expert among them, they make large quantities of Gold and Silver coin, as well as paper currency. They make a complete full and general assortment of it. Their Gold and Bank paper is admirably well executed, and is hard to detect, their silver is not near so well executed, but they do a large and extensive business, have many hands employed, and carry on upon a grand scale. Greene McGuire, living near West Liberty, handles a great deal of this money.

Frank Dyer, who was in jail with me a short time, deals pretty extensively in it. Stealing a horse whenever a suitable opportunity offers itself, he is considered a cunning and adroit thief, having practiced it from his boyhood up to the present time. Wyly Hill is one of the gang, he is but latterly initiated into the business, but has the character of being smart in the profession, and quite shrewd for his practice.

Harvy Williams, my brother-in-law, also belongs to the band, but he is comparatively young at the business, he passed some counterfeit money to my wife, his own sister, knowing it to be such since I have been in prison, for a cow he bought of her, she brought it to me, and when he found out I had it he came to the jail and redeemed it. Preston H. Dyer is another of the clan, he deals considerably in counterfeit money, he has passed it upon me, and I would warn the community to watch him.

John Higgins who resides in Brethet County, belongs to the band, he is largely engaged in the business, and will get somebodys head in a halter yet, and take some one in as I have been taken in, for these old experienced hands usually manage to keep some other men betwixt them and the latter.

I was once accused of swearing a lie in a suit for gambling. Farish and Turner defendants, and Mays plaintiff. I was a witness in the suit, but I swore the truth and nothing else, it was in relation to a fee I was accused of giving Col. Chiles, and for the truth of this declaration, I appeal to Col. Chiles. I never swore to a falsehood in my life, I never stole anything, my crimes has consisted in a great measure in gambling, drinking, dissipation and passing counterfeit money, and God knows that these were surely enough.

I have had some hard thoughts and unpleasant reflections upon my father-in-law, in reference to his treatment of my wife after my arrest and confinement, he took from her nearly all he had ever given her, after I was married to her, and brought accusations against her of which she was as clear as myself. I think, however, the old man has seen his error, and is sorry for his harsh treatment to her, as he visited me the other day in the jail, and made some prepositions in relation to taking my wife and child, and taking care of them, and though I did think hard of the old man, I now freely forgive him. It is my desire, however, that my wife shall not trouble her father or her relations to take care of her after I am gone, yet if it is her wish to do so, I lay no injunctions upon her, she will then be fully absolved from me, and will have a right to determine for herself.

I am told my brother-in-law, Daniel Williams says that he could see my wife, his own sister hung, rather than myself, for he says she knew all about my killing the peddler, this is an unjust accusation against her, for I declare before my Heavenly Judge, she knew no more about it than he did, and Daniel ought to remember that he often encouraged me in gambling, and other crimes that have helped to bring disgrace upon myself and friends.

After having been committed to prison, and finding all my efforts at escape unavailing, I began seriously to reflect upon my wretched condition, I was visited by some ministers of the gospel, who prayed with and for me, and kindly instructed me in the ways of righteousness, these ministers visited me from time to time, urging upon me the necessity of repentance, toward God and faith in our Lord Jesus Christ. I sought and I trust have found peace in believing, I am well aware that many will give no credit to my profession of christianity, and that many believe the Almighty himself cannot pardon such a guilty rebel, and that some have even thought it quite wrong religious people to pray with and for me, and instruct me

in the way of salvation, but the Lord seeth not as man seeth, and he has emphatically declared that a broken, a contrite spirit he will not despise, and that man that trembles at his word, to him will he look, he came not to call the righteous, but sinners to repentance, and he has most graciously invited the weary and heavy laden, to come to him and find rest to their souls, and after the crucifixion and resurrection of Christ, he commanded that repentance and remission of sins should be preached in his name among all men, beginning at Jerusalem, and why begin there only, that his murderers might have a speedy offer of life and salvation. Then be not so uncharitable as to limit the holy one of Israel, or set bounds to the infinite compassion of Jehovah, his ways are not the ways of man.

My career on earth will soon close, and I humbly believe that my guilt being washed away, my redeemed spirit will find some humble seat in the mansion of felicity.

My only hope is in the merits of the Lord Jesus, his blood, his righteousness is my only hope. I know there is safety and salvation in none other. O, that he may sustain me in the last trying moment, while thousands gaze upon me while I am ushered into the presence of my Maker, and I make all the expiation that life for life can make, may my disembodied spirit meet its God in peace.

In the brief history which I have given of my sad and short career, may be seen first the want of Godly counsel, and pious instruction, had I been religiously trained in early life, then my feet had never been swift to shed blood. O, had I been taught ere my habits were formed to reverence God's holy laws and commandments, how different now would have been my situation, but O, alas! these teachings were not mine. Had I been taught it was wrong to profane God's holy name, wrong to violate his holy Sabbath, wrong to drink whisky, wrong to play cards, but ah, wretched me, these instructions were not mine, and bitter, yes bitter indeed must be the reflections of my parents, that they were not mine, the ignominious gallows never would have been my wretched lot, and bitter must be the reflection of those ministers of the gospel, in the section where I was raised, that they never privately instructed me, and admonished me of the error of my ways. Do preachers indeed think, that preaching an occasional sermon, is to clear their skirts of the blood of all men, has not God required more, yea, much more than this at your hands, if not surely the Almighty has had but little use for *you* in his moral vine-

yard, and I would here say to all ministers, cry aloud and spare not, be instant in season, and out of season loose no opportunity of saying and doing in the cause of your master, save some with fear, pulling others out of the fire, plucking them as brands from the eternal burning. See ye to it, that your skirts are not stained with the blood of souls, how many of you can stand and see me executed, and lay your hands upon your hearts and say my skirts are clear, I gave him better counsel. O had you give me private instruction as you might have done, you might have saved me this sad fate, but instead of this, some of you have drank the intoxicating cup in my presence, and thus by your examples led me on to ruin, remember ye cannot drink the cup of the Lord and the cup of the Devil, but this account you must settle with your maker; but let me drop one word of caution to old men, young men, little boys, and every one whose eyes shall ever rest upon these pages, beware, oh! beware of whisky drinking; preachers, their dram drinking example is a curse, a cruel and bitter curse to society, and the bad example set by the drinking of one dram, will more than counterbalance the good impressions made by many sermons. Whisky, that all pervading destroyer, is the great curse of the age. Wherever he cometh, he smiteth and spreads wo and misery all around, and the poet spoke with inspiration when he said:

"The lips that doth with whisky burn,
Shall never prosper long.
Gods righteous vengeance shall consume
The whisky loving tongue."

And I would say to all fathers and mothers, oh keep it from your children, as you would the most deadly poison, for at the last it biteth like a serpent and stingeth like an adder; moderate dram drinking leads to drunkenness, and drunkenness to gambling, and gambling to counterfeiting, and counterfeiting to stealing, and stealing to robbery, and robbery to murder, and murder to the gallows; oh, what an awful and fearful end, and how rapid the steps that lead to it, and even some preacher's sons now in this community, have become far advanced in this downward track.

Young men, old men and middle aged, take warning by me. Shun drinking and swearing and drinking and swearing company. Shun card playing and the company of card players, for, be assured, their steps take hold on hell. Drinking and gambling is sweeping like an avalanche over this land, and is

leading its tens of thousands annually to a premature and untimely end; and if it had not been for its baneful influence, I might have lived to enjoy life's blessings to a green old age. I would say to my father, to my brothers, and to all my friends at once and forever leave off intoxicating drinks and swearing ere they lead you to untimely ruin, and while I am surrounded (as I presume I will be) by thousands to witness my execution, I will call on all who behold me to witness the sad end of drinking and gambling as exemplified in myself. To my dear companion this is to be one of the most painful trials. Already the cup of her anguish has been filled to overflowing, accused by her friends of being privy to, and thus conniving at the dreadful deed that brought me here, and for this cast off and forsaken by them, I here take occasion again, most solemnly to aver, that of my crime she had no idea until it was revealed to her by Mr. Burns.

She often, yes, often remonstrated with me about my drinking and gambling—plead with me to leave them off; and I will here state that if I had been led by her counsel I never would have got into the difficulties I have, but might now have been happy, at my own fire-side, enjoying all the blessings of domestic life. She has loved me with that love that none but woman knows, and her pure affections have clung to me even in my degraded state, with a tenacity stronger than life itself. She has visited me as often as she could be permitted to, and contributed to my comfort as far as was in her power. I know that her connection with myself will soon be dissolved, and hope the world will not visit my iniquities upon her defenceless head, that her and my innocent babe will not be frowned upon on my account. And now, my dear wife, I hope you will try to live a religious life. Train up our infant daughter to fear, love and serve the Lord. Teach her that sin and wickedness is the sure road to misery and ruin, and that a religious life is the only way of peace and happiness here and endless felicity hereafter.

I have given the facts contained in the foregoing pages under greatly embarrassing circumstances, placed within these gloomy walls, in a loathsome dungeon, my body bound with chains, and under the awful sentence of death, the circumstances are indeed sufficient to throw the strongest mind into the deepest gloom. But Jesus Christ is sufficient to give consolation to the most despairing soul, for he most graciously declares, "him that cometh to me I will in no wise cast out." O! precious promise to see it is worth more than worlds,

But it is impossible to describe what has been the horror of my feelings since my confinement in this miserable place. My breast has been like the tempestuous ocean, harrowing up the the very bottom of my soul. It was not until I became a prisoner here that I became sensible of the wickedness of my life, and the enormity of my complicated crimes; here the hour of reflection came to me, but alas it came to late to prevent justice from cutting me off. Since my imprisonment, often have I wished that I never had been born, or that I had died in infancy, but I now look forward to that serene calm "where the wicked cease from trouble, and the weary are at rest." There the prisoners rest together; they hear not the voice of the oppressor, and there, I humbly trust, this aching, heaving breast will not be ruffled by the storm of sin.

I am, in a very short period, to stand on the fatal scaffold; the strong and unrelenting hand of the law is already stretched out, and holds in its grasp the flaming sword of justice, ready to execute the dreadful sentence, but I humbly trust that while my body is elevated high upon the scaffold, the heavens from above will smile upon, pity and save a repentant prodigal.

I have now made a full, frank and open confession, and should the eye of any of the friends or relatives of the poor peddler ever fall on these pages, I most humbly implore their forgiveness. I beg the forgiveness of the community, and as I hope for pardon, through the blood and merits of Christ, surely this request will not be withheld by man, to a worm like myself, standing, as I now am, on the the breaking verge of eternity, and I may here, with propriety, adopt the language of another, and say,

"Rising griefs distress my soul,
And tears on tears successive roll,
For many an evil voice is near.
To chide my woes and mock my fear,
And silent memory weeps alone,
O'er hours of peace and gladness gone."

To those persons who have visited me in the jail, and treated me with kindness, I return my acknowledgments; and to those clergymen who have kindly visited me in my cell, prayed with and for me, and instructed me in divine things, I now return my grateful acknowledgements, and heartfelt thanks; I indulge the fond reflection, that their work of faith and labor of love has not been altogether in vain in the Lord.

I am standing on a narrow neck of land, between two

unbounded seas, and only an inch of time, comparatively, separates me from the unfathomable abyss of Eternity, and the short space of time allotted me is flying rapidly by in the rapid flight of time, and now having completed this brief history and sad confession, I desire to employ all my waking moments in that short space of time now intervening between this and the hour of my execution, to the great and all important work of a full and thorough preparation to meet the Judge of all the earth in peace, and that I may the better be enabled to do this, I hope kind christian friends will still visit me, pray for me, and instruct me in divine things, for

“Nothing is worth a thought beneath,
But how I may escape the death,
That never, never dies ;
How make my own salvation sure,
And when I fail on earth, secure
A mansion in the skies,
Oh! write the pardon on my heart,
That when I do from earth depart,
I may depart in peace.”

I desire that the Rev. Jesse P. Meek, accompanied by Dr. Daily, shall attend me on the day of my execution, to pray for me, and give spiritual counsel in my last trying moments, which they have kindly consented to do.

And now I have to say last of all, that the facts set forth in this work are true, and nothing but true, and as the last official act of my life, I, with my own hand, sign my name to this work, on this 24th day of November, 1853.

P. S.—I return my sincere thanks to Mr. Mineer for his kind and gentlemanly treatment of me at all times.

WILLIAM H. BROWN.

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SPEECH OF MR. BURNS.

MAY it please the Court, and you, gentlemen of the Jury, I appear before you as an humble advocate of the prisoner, and, as such, beg leave to confess that, in all my previous practice at the criminal bar, I never before appeared before a Jury of my country under circumstances so embarrassing to the cause that I appear before you to advocate. That embarrassment does not arise from the cause you have under your consideration, strong enough, indeed, to call into active service the ingenuity of counsel more learned, skillful and ingenious than your humble auditor pretends to be. But it arises from that intense degree of excitement that has swept over the country against the prisoner, and that was as a howling tempest around and within the walls of this temple of justice; demands at your hands irrespective of law; to satiate its vengeance in the execution of the prisoner; that the prejudice of which I speak is not confined to any particular locality or district; but has taken possession of the feelings of each individual in the country, is but too clearly evinced by the fact that, in selecting a jury to try the prisoner, over two hundred citizens, reputable in society, have been presented, and, on their vairdiar, declared that they had both made up and expressed an opinion relative to the guilt or innocence of the prisoner; nor could we, in that number of persons, find a single reputable citizen who had not made up and expressed an opinion. To be judged by a Jury who had prejudged our cause, and, as we are constrained to believe, unfavorable to us, was giving to the Commonwealth no ordinary degree of advantage over us; yet we, sensible of this fact, desponding of all hope of getting a Jury possessing no such unfavorable impressions, sought alone to procure a Jury of sound, discriminating judgment, who would be able to comprehend the rules of law by which the cause is to be governed, and of calm and dispassionate temper sufficient to enable them to lay aside, as far as human nature is capable, all predilections formed out of the court-house, and hear the evidence and law submitted to them in the trial and form a judgment upon the premises; and that, also, possessed firmness of character and a just independence to enable them to deliver their verdict thus formed, and return back to the bosom of society from which you have been

taken, fearless of the excitement of the populace, or the censure of any individual or set of individuals. Such you have declared before Heaven and this Court that you were capable of, and would do, and the prisoner, placing implicit confidence in your integrity, accepted you as his tryers, notwithstanding your predilections, and threw into the scale of justice to be poised in your hands his life, the gift of God to him, dear at all ages and in all conditions to all sane men and women; a thing that society was chiefly instituted to protect. Conscious, however, of the fallibility of our nature, and of the, in this cause, more important fact, that when the human mind has once formed its judgment on a given question, whether from legitimate or illegitimate evidence, when called into exercise again on that subject, it will find itself, with indiscoverable ease, conducted to its former conclusion, and this, too, on testimony far short of that measure that our laws in their human spirit has prescribed as full and sufficient to forfeit the liberty or life of its lowest or greatest subject; for in this country of liberty and equality, thank God, our laws know no difference in its proceedings against any of its citizens; yet we trust that you will exercise your best efforts to forget your former impressions, and adhere alone to those formed by the law evidence and discussion of the counsel on both sides of this important cause, and if, by such an investigation, your minds are convinced to the exclusion of a reasonable doubt of the prisoner's guilt, you should so pronounce it, though death be the consequence to him and a dark mantle of mourning, steeped in infamy and crime, be cast around the shoulders of his family and friends. But if, gentlemen, the testimony should not come up to that measure that the law has fixed as sufficient to generate in your minds a conviction, to the exclusion of all reasonable doubt of the prisoner's guilt, though earth may scoff and censure your integrity, and his persecutors may howl with rage and gnaw their tongues with pain and chagrin at his acquittal. For, whatever your out-of-doors predilections may be of the prisoner's guilt, if the testimony in this trial, when tried by the legal standard, should not amount to full proof of his guilt, as prescribed in the books, and you were to return a verdict of condemnation, with a knowledge of the insufficiency of the proof against him, you would not only be guilty of moral perjury, but you would likewise be guilty, morally, of the very crime that the unfortunate prisoner stands charged of before you; not, indeed, of his murder, and robbing him of his money, but of his murder, and robbing him of that which is more precious, his life, and the commonwealth of one of her citizens; his parents of their child; his weeping wife of her husband, and his child of its father. You have been told by my friend Col. Chiles, in his very learned and eloquent speech, just delivered before you against the accused, that he had been employed by a respectable number of citizens of Morgan county to prosecute, and that the prisoner's counsel, would, no doubt, arraign him before them for prosecuting

the prisoner; he further told you a conviction in this case was necessary to redeem the county of Morgan from the baseness of the crime, and to deter future offenders from perpetrating like offences. We do not complain of the Colonel for prosecuting in this case; to prosecute is a right that we are disposed to concede to every lawyer; but, gentlemen, we do deny, most earnestly, and that upon the authority of the law books, that any principle of deterring offenders and preventing crimes, or redeeming Morgan county can justify the conviction of an innocent man; for the humane rule is, that it is better that ninety and nine, that is, an indefinite number, of guilty men escape punishment than that one innocent one should suffer.

We also do complain of the Colonel for having alluded to the fact before this Jury, that he was employed by a respectable class of the citizens of Morgan. I can not see any substantial reason for that allusion, except to more fully impress this Jury of the fact that excitement prevails against the prisoner among the respectable classes to such an extent that they were unwilling to trust the management of the case against this unfortunate man, to the official organ of the Commonwealth, a man who, for his integrity and diligence in discharging the utmost of his duty, stands almost peerless among prosecuting attorneys. No, this case, with its accumulated strength from an unparalleled excitement against the victim of public and private vengeance, can not be left to the ordinary course and management of the Attorney for the State. But the influence of money must be added to the excitement, and Colonel Chiles and Major Sudeth's transcendent powers combined with the Attorney for the State, must be brought to bear on a Jury who comes from the body of an excited country, and must return to the bosom of the same, and the Jury although prepossessed of opinions unfavorable to the prisoner, they must be reminded of the common saying in this county, that Brown must be executed or the county is disgraced, and thus they are indirectly told of the feelings entertained in the bosom of that society from which they were taken, of which you are members, and to which you must soon again return, and as if still further to madden and intoxicate the rage of the populace, and excite the Jury against the prisoner, he converts himself into a dramatist and exhibits the prisoner shooting the deceased, and the misfortunes and oppression that Ireland, whose son and citizen the deceased was, has suffered from England, this, showed off in reciting portions of songs, &c., a style calculated to move the feelings, and that challenges the imitation of the most skillful and popular stage performers, at the conclusion of which you are exhorted to protect the poor oppressed, Irish, and execute one of your own native-born citizens, without the warrant of the law, or else anarchy and fearful despotism will be our inevitable doom. I will not attempt, in replying to Col. Chiles, to follow him into his history and exhibition of British oppression, nor

will I reply to his lamentations over the ruins of Ireland, because it has nothing to do with the case, neither was it spoken of in the proof. While I deeply sympathize with Ireland, I am actuated with a spirit of intolerance for British institutions, policy, &c. But that has nothing to do with the question your oaths bind you to inquire into; neither shall I pretend to play the counterpart of the Colonel's performance; for in this, were I disposed to put forth my utmost efforts, I but too well know his immutable powers of description and action would so far transcend mine as to render my pretensions ridiculous. Therefore, as it was all out of the record, and only introduced by the Colonel's ingenuity to excite the feelings of the jury, and intoxicate them with the maddened rage of the populace. I can only remind you that to be moved or seduced by any such seductive influences would violate the spirit of your oaths, and insult the just and humane spirit of our laws, and disregard the sacred rights of an American citizen—to show your sympathy for the Emerald Isle, and your utter abhorrence of British oppression. While I am frank to concede that our happy country is the asylum of the oppressed of every clime, and that the subjects of every clime may repose under the shades of our free institutions in the full enjoyment of the protective influence of our laws; yet, upon no principle applicable to the genius of our institutions or consistent with the rights of our citizens can a conviction of a citizen take place charged with felony—to show the liberal character of our government and people toward strangers. I am free to concede that if in your judgment fixed from the proof, and not from the clamoring rage of a maddened populace, you should believe our citizen has murdered the subject or exile of any clime, it is then your duty to convict. But under no circumstances can you legally convict, unless the proof of guilt is of that conclusive character and tendency appointed by the law, whatever your private opinions formed from rumor may be. For here permit me to assure you without the fear of successful contradiction, that our laws emanating from society as they do, and being the perfection of human reason practically and philosophically exercised for many centuries, has as carefully defined what measure of proof, in a criminal trial, should or should not justify a conviction as our statute books has defined, how and by what sort of instruments and contracts personal and real property should pass from one to another, and this assertion I believe you will not doubt, when you reflect how much more a man or men, that is the source of all power in this country, and from which the laws emanate respect's life and liberty, than property, you will not be surprised, therefore, to learn from hearing the books read and reading them yourselves if you choose, that the law has carefully defined in clear and intelligible language, what proof shall constitute sufficient proof of guilt to justify a conviction for felony, with as much clearness and precision as it has what act of yours shall give you a title to a horse, a cow, or tract of land. It, therefore, becomes my duty to read and comment on the law on this sub-

ject and make you acquainted with its principles. So far as they are applicable to the case under consideration which I trust you will hear with a degree of calm patience, equaled alone by the patience with which you have heard the proof. In attempting to discharge this delicate and important branch of my duty I will endeavor to reply to the reasoning on the law as read by the prosecution, and apply the testimony to the principles of law that I contend arises under its influence, by which I am in hopes to show you that the commonwealth proof, though very imposing, is not of that conclusive character and tendency to justify a verdict of condemnation. But that an acquittal the prisoner has the right to expect at your hands, not indeed, through your sympathies or grace, but as a matter of legal right guaranteed to him by the sovereign mandate of the laws of his country, just as much as you have to a verdict for a sum of money, if you prove your opponent owes you; if we can be so fortunate, on behalf of the prisoner, as to convince you that the proof against him, giving it its utmost force, only raises one or more probabilities of the prisoners guilt as opposed to one or more of his innocence, which we believe it does, then doubt such as the law contemplates occurs, and it becomes your duty in response to, and fulfilment of what you assured the prisoner you would do, when your conscience was sealed, by the most solemn test that human ingenuity can devise to acquit. Believing as we did in your integrity, we threw our life in your hands, how you will redeem your pledge we call on God to witness, who, at this moment is scrutinizing every purpose of your hearts, and who will bring you into judgment with the works of this day. Here, gentlemen, let me remark with all earnestness that, if upon any further examination of yourselves, you should find your prejudices more powerful than you had supposed, and that you are likely to be governed by them and not by the law and evidence that you have and will hear in this trial, it is due to yourselves, to the integrity of our laws and to the rights of the prisoner that you come out and make it known. This court who is charged with the administration of the laws, would discharge you if you should make known every such impediment: if such should be found to exist, to make it known, would be an act of justice and honesty on your part that would excite the admiration of all honest men and be treasured up as a precious memento of the honest promptings of an honest heart. With these remarks, gentlemen, I here frankly remark, we do not deny the death of the deceased, and that he came to his death by violence, and that who ever did kill him was guilty of a cold blooded and disgraceful murder. With this concession it will be useless for us to reply to all or any part of the law and testimony offered by the prosecution to show that the peddler was killed, and that it was done with malice—a fore thought—it is lamentably true that a foul brutal murder has been committed in your county; the perpetrator in human shape yet has the spirit of a demon. But we say it is not true that the pris-

oner killed the deceased, the prosecution says it is true, and that is the only issue between us, therefore, it will become our duty at this period to briefly notice the testimony offered to establish his guilt. And here, gentlemen, indulge me to remark that the testimony against the prisoner bears more the resemblance of a legal romance than an actual transaction, and if an actual transaction, then all reason and experience must attest the fact that the prisoners conduct and conversation, if not a romance, is opposed to every principal governing rational beings about to perpetrate an offense amounting to a felony, that the prisoner is a sane man no one who knows him can doubt. I am, therefore, left to conclude as I believe you also will, that all he said was a romance, and some more depraved man took advantage of his innocent romance to do the foul murder, and then placed the table linens in his way that he might find them and thus doubly load him with suspicion. Such I reasonably conclude has been the ingenious workings of the real offender to avert suspicion from himself and cast it on the prisoner. Here, let us examine the proof: the 6th of December, 1852, a peddler of table linens came, H. Williams, brother-in-law to the prisoner—the prisoner on his way to a corn husking heard of the peddler, and that he, to all appearances, had five hundred or six hundred dollars; he jocularly proposed, in the presence of several persons, all respectable, to go and take the money, in the same jocular mood said it was his money. He went on to the corn husking where he met with a dozen or more persons; the peddlers name was again called up but not by the prisoner; the amount of money he had was again spoken of, and it was also said that the prisoner claimed the money and said he would not give any one ten cents to insure it to him. Being asked how he would get it, he said he would follow him and get in a game of cards and win it. Being told the peddler was a moral man and would not play, he said he would throw him down and take it. Being told he had a knife, he said he would hide behind a tree on the ridge and knock him down and take it whilst he was kicking. He further said he would give a load of powder and lead at any time for that amount of money, and that he had during that night made propositions to three different men, to go in partnership with him in the adventure. All the witnesses swore the conversation was romantic and they regarded it as such at the time, and that such fool jokes was in keeping with the jokes of Brown; that afterwards he spoke of having a bank in a hay stack, and was seen at Bloomington with forty-five dollars, ten dollars of which was counterfeit. That he afterwards went to Portsmouth to collect a debt due him there and get some cards with peculiar marks on them; he tried to hire persons to go with him, but could procure none. He, on his way, professed to find two white and one brown table linens and nine napkins, corresponding with the peddlers in number, style, size, &c.; that he sold one to a man that lived in three miles of where the peddler was killed, and sold and give the others away

to his relations in Greenup county. That he had started about day light, the day the peddler was killed, to go to his fathers to a crib raising, to which he had been invited several days before, and said he would hunt through the woods and try and kill a deer; that the direction to the crib raising was a different course to the place the peddler was killed, and that about one o'clock of that day he was seen by Mrs. Smith; he told her his name, and that he had wounded a deer that day and followed it until he had got lost, and inquired of her the way home. She showed him the way and did not know him, except he told her his name; that he was well acquainted with the woods, and when met by Mrs. Smith was going in a direction from home, and was in one mile and a half of where the peddler was found.

That the peddler was afterwards found dead near where Brown said he would kill him. He had a ball in him near the size of the balls Browns gun carried, and was compared with one of Browns balls and seemed to agree, but was not weighed; horse tracks was found near where the peddlers body lay, but was not measured so as to compare it with Brown's horse's tracks; that a man's tracks was seen near the body of the deceased, but was not measured and compared with the prisoners tracks; that deceased was killed on the public highway leading to and from the towns of Painsville and Louisa, to West Liberty that the peddler had left the house he stayed all night till about sunrise and had $3\frac{1}{2}$ miles to go, he walked fast and had only one house to pass where he stopped not exceeding 15 minutes, that he must have been killed about half after nine o'clock in the morning of the 7th of December 1852. This is the proof that the commonwealth presents you with, and upon it demands at your hands the execution of the prisoner; and I must confess that taken alone and unexplained by the prisoners testimony, and treating the prisoners conversations as real and not romantic, it presents a concatenation of circumstances, very persuasive indeed of the prisoners guilt, but when applied to the prisoner as a real test of human conduct and conversation, under similar circumstances it loses much of its persuasive force, but I will discant more at large on this subject when I come to compare and discuss the relative force of the testimony, for and against the prisoner, and here I may have to pass in review briefly the testimony of the prisoner.

It appears for the prisoner that several days before the peddler was killed his father had appointed that day to raise his crib and had invited his son to help him, that about day light of the day the peddler was killed he took his gun and started to the crib raising a direction different to where the peddler was killed and 7 miles distant from it, that his father wished him to hunt through the woods and kill a deer if he could, that about sun up of that day he got to J. C. Browns house six miles distant from where the peddler was killed, being told there that the crib raising was put off to the next

Day he being somewhat intoxicated laid down and slept until after breakfast, that about 9 or 10 o'clock he left there saying he would hunt Buck; that about $\frac{1}{2}$ mile from the house he shot and called the dogs, they knew his voice; that in the evening he came home he said he had wounded a deer and followed it all day and got lost, the witnesses said he wore no stains of blood or marks of violence; that the prisoner was a poor man, but generally had some money; that he was seen with five hundred and fifty dollars before the day the peddler was killed, and that he had sold a beef and got the money for it, and had sold some salt and got the money for it; that he frequently played at cards, and was generally successful; no proof has been offered to show where the persons at the corn husking that heard Brown's silly conversation, was on the day the peddler was killed, and here I must remark that it is strange, indeed, that the prosecutors in this case has not produced those dozen persons present at the corn husking, and proved their whereabouts on the day the peddler was killed, and it is equally strange that the ball cut out of the deceased, and now in court, has not been weighed with one of Brown's balls; this omission is the more remarkable when we reflect that there has been a previous trial of this case, that resulted in a hung jury; and before that jury's remarks was made at great length about this omission. Is it not fair to conclude that Brown's prosecutors but too well knew that the production of these witnesses would not suit their purpose, and the comparison, by weights, of these balls would not be favorable to the prosecution, if not why in the name of common sense has not the prosecutors, maddened as they are with rage, and hauling us blood hounds for his blood, not introduced those witnesses, and this test of comparison of the balls, it would have rendered that certain and conclusive, that is without it, uncertain and unconvulsive. I conclude, gentlemen, there is something wrong in this omission and refer it to your honest consideration and scrutiny. Before I proceed to a discussion of the relative force and bearing of testimony and its sufficiency or insufficiency, to warrant a conviction under the law, I beg you to remember that no witness on the part of the prisoner, has been impeached, nor has the prosecution, with all its diligence and in full possession of the prisoner's testimony and names of his witnesses, now over six months, so much as offered to impeach the lady who proves an alibi in this case. But, be it remembered to his and her credit, that he has frankly conceded that she is a lady of respectability, and I am sure, that without his generous and liberal concession as to her, her correct deportment and manner of deposing in court, was such as to win her the confidence and entire belief in the truth of every word she swore, of all who heard her. Then, gentlemen, if she be the witness of truth, and standing unimpeached, we are bound to regard her as such, can it be true that the prisoner could have been at her house the morning of the 7th of December, six miles distant from where the peddler was killed, and

remained there until near or perhaps quite ten o'clock, and yet been at the spot where the peddler was killed about half after nine o'clock? We are bound to conclude the deceased was killed about nine o'clock, or, at the latest, not over half after nine. The Commonwealth shews by her proof that he stayed all night about three and one-half miles from the place he was killed; that he was in a great hurry to meet a company of which he was a member at the mouth of Big Sandy, on the 9th; that he left about sun-rise; walked rapidly, and would have made the distance in about one hour and a quarter. No house was on the way for him to stop at except Mrs. Fergerson's, where he only called, as she proves, not exceeding 15 minutes. The sun rose that morning, as the almanac exhibited before you proves, at ten minutes after seven o'clock. Then, making all reasonable calculations for any reasonable delay, he must have arrived at the fatal spot about half-after eight o'clock. Pause one moment and consider the testimony of the lady. Where was the prisoner, then;—if the testimony of three unimpeached witnesses is to be believed, he was then six miles distant, and unless he possessed super-human powers, which I deny, he could not have done the crime, unless the deceased, governed by some fatality, lingered on the road until about the hour of twelve o'clock; for allowing the prisoner to have walked three miles an hour, he could not have reached the bloody spot until about that hour. What circumstance in human reason so far as the proof in this case shews, could have detained the deceased on this road such a length of time? May it not be that some fell-demon in human shape, heard the jocular conversation of the prisoner, and with satanic subtlety, seized on the auspicious moment to waylay the deceased at the place spoken of by the prisoner, and kill him and rob him of his money, and then, watching the prisoner, as an object likely to incur censure, place the table linens and napkins in his way, that he might innocently pick them up, and unconscious of the snare laid to entrap him, honestly expose them to sale or otherwise exhibit them in the country, and thus cast him under double suspicion of the murderous act; or, gentlemen, may it not be true that, traveling a public highway, he met some one to whom he offered to sell some of his articles of traffic, and making a sale, it became necessary to make change, and he exhibited in that lonely place his money, as he did to H. Williams, and the individual's avarice was excited thereby, and he slew and robbed him. By what means the horse tracks came near the dead body is a problem I can not solve satisfactorily. He may have been hitched there by some innocent agent, or a loose horse may have made the tracks, or some one traveling may have innocently turned the horse he rode out in the side of the road; or placing the worst construction on the matter that the proof tend to establish, that the murderer hitched his horse there, would exculpate the prisoner; for the proof fully shows that he was on foot during the day, and not on a horse. But you are told that the pro o

shews that the prisoner said he would kill the deceased and rob him at the place he was found murdered, and that he was found in possession of table linens and napkins corresponding in number, figure and size with those the deceased owned the preceding day, and that the prisoner was out that day and seen within one mile of where the deceased was found, and these coincidences are pointed to as fully proving the hypothesis that the prisoner killed the peddler, and my friend Chiles reads you a section from Greanleaf on evidence, from which he concludes, the possession of the fruits of crime is conclusive evidence of the guilt of the possessor. But I flatter myself that I shall be able to prove by the books before I sit down, that Col. Chiles does not represent Mr. Greanleaf properly, and that all the law requires is, that the possessor of the fruits of crime should show by statement at least, and where other proof was out of his power, how he came by the goods, and where the nature of his possession rendered it impossible for him to prove how he came by the possession, all the law, in its wisdom, ever required of the citizen was to give such an account of his possession as the nature of his possession would admit. (Here he read from Starkie's evidence and Greanleaf on evidence. See former author, vol. 1st, part 3d, page 509, 512, and 513. See latter author, vol. 1st, sec. 54. Proving the foregoing position.) Any other rule of law would be supremely foolish, and would hold the citizen criminally responsible if he innocently picked up goods he happened to find, if it should turn out that such goods were the fruits of crime, and would lay a dangerous snare by which the innocent citizen could be ensnared by the wily highwayman and thief, as I much fear has been done with the unfortunate prisoner at the bar in this case. The circumstances pointed to as furnishing conclusive evidence of the prisoner's guilt, when taken in connection with the prisoner's evidence, must, as the rule of law just noticed, fall short of constituting proof sufficient to warrant the conviction of the prisoner. How often, within your experience, do you remember of having made threats, on slight occasions of excitement, against the life of your fellow-man without the slightest intention of ever executing the threat; and I ask you with all confidence how often have you heard persons in a jocular manner say they would kill or rob a certain individual, without the slightest intention of ever executing the threat? These jokes and threats, though lightly and carelessly made, are now to be made the certain and unerring evidence of guilt. I contend, gentlemen, that such is too slight and unconvulsive to found a verdict of condemnation upon. Experience but too well teaches us that he who meditates the commission of a heinous offence, punishable with sanguinary punishment, always secretes his purpose, and never disposes of the fruits of his crime in the country where the crime was committed. So remarkably true is this principle in human nature that it has become a common saying, though a homely one, that a "barking dog never bites." Now, I ask you, in all candor, and by every consideration

of human action, as portrayed by experience since men were created, and a knowledge of ourselves and the motives and impulses governing us in our actions, can you believe that the prisoner, seriously meditating the murder and robbery of the deceased, would have publicly proclaimed his intention and purposes before he done the act, and then, after doing it and possessing himself of the fruits of his crime, and dispose of those fruits to be used and spread on the table at the daily meals of a man living within three miles of where the deed was done, and this, too, when the proof shows the prisoner was on his way to Ohio, where he could have disposed of the linens with much less danger of detection? if so, he is a strangely organized sane man, and stands a solitary exception in all nature, so far as we have any experience. What was his motive to do the crime of murder? he had no spite or ill-will towards the deceased; nay, he had never gazed on his face nor interchanged a word with him. The prosecution answers my question by saying his object was to possess himself of the \$500 or \$600 of which he had heard the peddler was possessed; concede that such was the inducement to commit the murder, why did he want to possess himself of the money, I ask? The voice of reason responds, to enjoy it in future. Then, gentlemen, is it not passing strange indeed that the prisoner would, being a sane man, resort to such means to possess himself of a few hundred dollars for future enjoyment, as would insure his detection and a forfeiture of his life, as well as a deprivation of that very enjoyment his crime was intended to accomplish, and put him off in a shocking and ignominious death from the society of his wife, children and friends, and clothe them in infamous mourning? Is it to be believed that he is wholly destitute of the feelings and emotions common to our nature? Can you lay your hands on your consciences, and with truth declare that you believe beyond the reasonable doubt contemplated in the law, in view of the proof both for and against the prisoner, that he, being a man of good character, married to a lovely wife, who had rendered him as a pledge of her affection, a tender and lovely babe, could be so forgetful of every tie, social and moral, and so reckless to his future safety as to rush heedlessly over the precipice of crime and cut short his own earthly career, and thrust his spirit into the awful presence of an eternal God, to be damped in eternity to plan a fiery and liquid meine. No, gentlemen, I do not believe that you will be thus credulous, when your credulity will result in a punishment at which our feelings are so abhorrent. But you are pointed to the bullet as a powerful and weighty circumstance, evincing the guilt of the accused; its supposed size and correspondence with the prisoner's bullet, with which it was compared. But I implore you not to forget it is in proof before you that the prisoner's gun was of the ordinary size of guns in the neighborhood; that there was another gun that carried the same ball, in that neighborhood; are you, therefore, to conclude that because the ball cut out of the deceased

appeared to be of the size and shape of the prisoner's balls, that he and no one else killed the deceased? Is it not equally as reasonable and more charitable to presume that the smith who made Brown's molds, living in the same neighborhood, as he appears to be by the proof, used the same charge or drill to make other molds that he made the prisoner's with, when he was making molds to suit a gun corresponding with the size of the prisoner's. Comparing this testimony against the prisoner with the rule of law so often alluded to in your hearing; that the proof to warrant a conviction in a criminal cause must be of a conclusive character and tendency. (Sec. 1st, Starkie's evidence, p. 506.)

It becomes important to inquire what proof in law is conclusive, and will justify a conviction, and what is deemed inconclusive, and therefore insufficient to justify a conviction, and in answer to these questions, the books say that proof is always inconclusive, and therefore insufficient to warrant a conviction, when assuming all to be true that the testimony tends to establish, it raises no more than a finite degree of probabilities against it, for as the author says, although in civil cases, a jury may find a verdict on a mere preponderance of proof, yet in criminal cases, no degree of preponderant circumstances will justify a conviction. I care not if the preponderance in favor of guilt, and opposed to innocence, be as ten to one, or as one hundred to one, still if there is one chance of innocence, as opposed to any number in favor of guilt, the proof is inconclusive and is insufficient to convict. See Starkie's evidence, vol. 1st, part 3rd, page 506-507.

Hence gentlemen, you will perceive that the human and just spirit of our citizens, never allows the life or liberty of our citizens to be prevailed against; mere chances of guilt however numerous, when there exists one or more chances of innocence. To be more plain gentlemen, our laws will not admit of a jury conviction, on any degree of probabilities of the prisoners guilt, whilst there exists also one or more probabilities of his innocence, for you cannot help but perceive that when the proof raises no more than a finite degree of probability of guilt, as opposed to one of innocence, you to convict must guess the chances for you to guess correctly, being in the same degree as the probability of guilt as opposed by those of innocence raised by the proof. Hence results the human rule before alluded to, that it is better in any number of guilty men should escape than one innocent one should suffer, you must perceive that in thus guessing, a jury might occasionally convict an innocent man, and hence arise that admirable just and human rules of law, before alluded to, that the testimony to warrant a conviction must satisfy your minds to the exclusion of a reasonable doubt of the prisoners guilt, or as a learned American jurist more satisfactorily expresses the rule, that the testimony to warrant a conviction, must not be clouded with one or more doubts of guilt as opposed to any degree of preponderant evidence of guilt, but it must evince

the guilt of the accused as clear as a sun beam, leaving no fact or circumstance in the case upon which the minds of the jury may linger and reason; but the mind, when called to the testimony, must be conducted to a conclusion without stopping to reason as to which of several hypothesis are true. This rule, you will readily perceive, is no more than the one before alluded to, that the jury could not convict on any weight of preponderant evidence, but expressed in a different and more plain form of language. And again I would remark that this rule is no more than is to be found in the one forbidding a conviction whilst there is reasonable doubt—that is when there is testimony tending to establish guilt, and opposing testimony tending to establish innocence—as the jury then has to take up the testimony and weigh and consider it in order to form a conclusion, if they there cannot convict, because there is a preponderance of proof about which the minds of the jury are brought to a pause, as to which hypothesis is right. Therefore reasonable doubt does exist, and doubt and acquittal are in law synonymous terms. Happily for society, gentlemen, our law givers, often laying down the before-named rules for the government of criminal trials, furnishing many forcible but melancholy illustrations of the rule; such as the case of the unfortunate uncle and his niece to whom he was guardian. She had a large estate, he was her heir apparent, and she was one day heard to cry out “good uncle do not kill me,” and was not seen afterwards. Suspicion fell on the uncle of having killed her for her money, and he was required to produce her before the court; this he could not do for she had run away. He however, procured another girl resembling his niece, and attempted to pass her off as such, but was detected in the fraud. The circumstances appearing on his trial for her alleged murder, he was convicted and executed and it turned out afterwards that the girl was not dead. I ask you now, gentlemen, to compare that case with this, and also the case of the servant girl just read, and that of Mr. Harvy and many others which I could allude to as furnishing melancholy but forcible illustrations of the wisdom of the rules before laid down on the subject of doubt and preponderant testimony. Indulge me, gentlemen, now to examine more minutely this case, and compare it with the foregoing rules, and answer me in your conscience. Did the proof in this case come up to the legal measure, if nay, I will say it in God’s name that of justice.

May it not be true that Brown was accused of killing the deceased, and yet did not do it. May it not be true that Brown was out that day and did not kill the person? May it not be likewise true that the ball that killed the deceased corresponded in size with Brown’s ball, and yet some other person having a ball of similar size killed the deceased. May it not be true that Brown had possession of table linens and napkins corresponding in number size and quality with those the deceased used, and yet attained that possession as he said he did, does not his actions afterwards tend to

prove that his possession was not a criminal one, this might all be true, and yet without taking into consideration the lenient presumption the law indulges in, that the prisoner is innocent, and without taking into consideration the testimony in his favor, and still you only have four circumstances tending to show his guilt, to wit, his threats, the bullet and death of the peddler, and his possession of the linens as opposed to the presumption of law that he is innocent, which is equal to the testimony of our credible witness. I therefore contend that on consulting the commonwealth's proof alone, it but amounts to preponderant evidence, tending to show the prisoners' guilt, as opposed to the presumption in his favor indulged by the law, and it is therefore inconclusive and insufficient to justify a conviction; but be this as it may, when we combine with the consideration of the subject, the prisoners' testimony, it creates in the case such a degree of preponderant testimony that brings the cause within the influence of the before recited rules, and impells you by your oaths to try the case by the law and evidence presented in the trial, and therefore compels you to acquit the accused, having thus briefly noticed the case as presented by the commonwealth's proof alone.

I will now, by your kind indulgence, notice it in connection with the proof for the prisoner. And here let me remind you that you are to try this case by the law and evidence, that is by such facts as this honorable court has permitted you to hear, as tending to prove or disprove the issue. I also lay down, as a rule of law applicable to this case and binding on you as a jury, that the statements of an unimpeached witness or witness, is such evidence as you are bound to regard and credit. Then, gentlemen, I may safely conclude that you will, in your retirement, regard the evidence of the lady who proved, in this case, an alibi, she is no blood relation and stands unimpeached by witness or her deportment in court. And by the concession of the prosecution she has sworn the truth. It would be strange, indeed, if you were to disregard her statements and blindly guess from the four circumstances against the prisoner; find him guilty it would savour of prejudice, and not the calm and sober consideration you promised to give this case. For, if unimpeached witnesses, credible and unimpeached, are not to be believed, then why were they sworn to facts tending to manifest the prisoners' innocence? Where the necessity of this trial, is not the veriest mockery of justice. Why not spare his counsel nor exhaust him with disease and labor of this defense—and why not save the prisoner from anxious hopes and excitement growing out of a trial that is to be his doom irrespective of the testimony, then away with its mockery of justice, invite the moloch spirit of the country against the prisoner, to step forward and satiate its vengeance by an execution without disgracing the polluting a court-house, with an execution under the semblance of legal authority. Such a course, I

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