

prisoners. That under the oath they had taken they were to *give a true verdict according to the evidence*, and, though prosecuting for the crown, he would take the liberty of cautioning them in a case of life and death not to found their judgments upon surmises, conjectures or reports that had originated out of doors. That in stating the substance of the evidence in support of the prosecution he should confine himself strictly to such matter as he was conscious would be laid before them, and decline making further observation upon the testimony than what the duty of his office rendered indispensable. That being a stranger to the situation of the country he could not be so well acquainted with many circumstances that would turn up in evidence as the jury themselves, and on that account would be under the necessity of leaving to their consideration the chief subjects of observation and inference. That under the indictment there were two facts for their investigation; the fact of a Murder having been committed, and the fact of the prisoners at the bar having been the perpetrators of that Murder. That in deciding these two important points they were to be guided by the rules of legal evidence, of which there were two kinds, positive and presumptive. That positive proof was certainly the most satisfactory upon occasions of serious enquiry and in this case it would be particularly so; but that the secret perpetration of the crime had rendered such proof inaccessible. That their verdict must therefore be founded upon presumptive evidence alone of which there were three kinds, *light, probable, and violent*. That the first in the eye of the law was of no consideration whatever; that the second depended upon the circumstances composing it and the judgments of those to whom it was submitted, and might on many occasions amount to full proof; and that the last was of itself equivalent to positive evidence. That the major part of the facts that would appear in support of the prosecution would come under the second class, and as such claim the most pointed attention and remarks of the jury.

Mr. Stewart then proceeded to the substance of the evidence by stating, That on Saturday the 19th of March last, about four in the morning, the house of the deceased was discovered on fire;—that his neighbours having re-