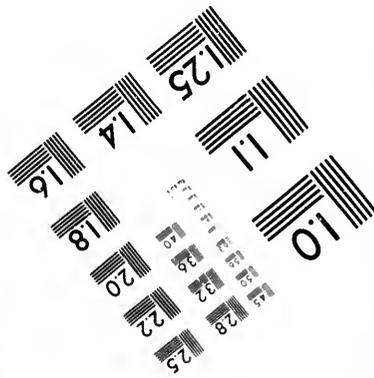
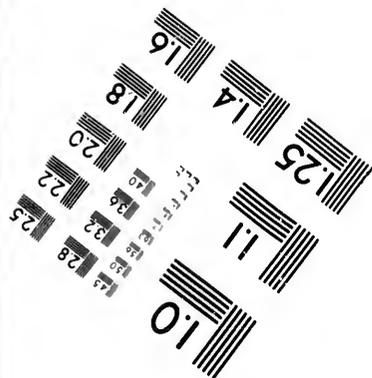
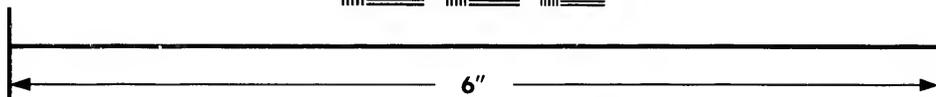
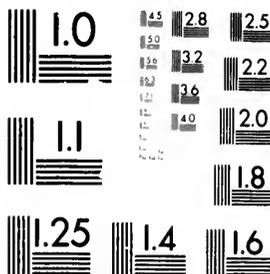


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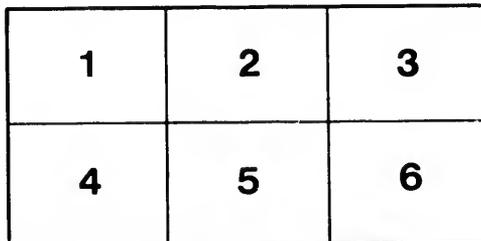
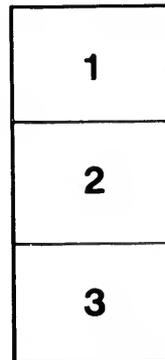
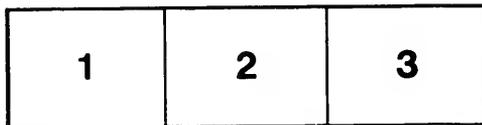
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THE TRIAL
OF
PETER MAILMAN

FOR THE
MURDER OF HIS WIFE,
AT LUNENBURG, N. S.

TOGETHER WITH THE CIRCUMSTANCES OF THE MURDER; INCIDENTS OF THE TRIAL
THE PRISONER'S CONFESSION; HIS EXECUTION; FULL REPORTS OF EVIDENCE;
AND SPEECHES OF COUNSEL IN EXTENSO.

Arranged and prepared by

J. W. LONGLEY, ESQ.

A SPECIAL REPORTER AT THE TRIAL.

HALIFAX, N. S.:
PRINTED BY WM. MACNAB, 12 PRINCE STREET,
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THE

LETTERS

OF HIS

WIFE

AND

J. W. LONGLEY, ESQ.

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PREFACE.

As Special Reporter for the "Acadian Recorder" and St. John "Daily Telegraph," I attended the trial of Peter Mailman, charged with the murder of his wife, at Lunenburg, N. S. The trial referred to began on Friday, the 17th day of October, 1873, and created intense interest, not only in Lunenburg, but throughout all Nova Scotia. Happily, murders are rare in this Dominion; we are blessed with a state of Society which renders crime of this revolting character almost impossible. The circumstances connected with the Bridgewater tragedy were so horrible in their nature, and the crime fixed itself so irresistibly on the prisoner, that every body was eager for the results of the legal investigation of his guilt.

It was the first time I was ever brought face to face with a murderer, and I confess to having acquired an exceedingly deep interest in the man, and the whole case. And, while at Lunenburg, many persons expressed a wish that full reports of the whole case should be gathered together in pamphlet form, and preserved as a painfully interesting local record. Acting on this suggestion I have devoted what few spare hours I had to this task, and this work appears simultaneously with the unfortunate man's execution.

In my record of the evidence and scenes of the trial, I am dependent chiefly on notes taken at the trial, which appeared at that time in successive numbers of the *Acadian Recorder*. The social history of Nova Scotia has few sadder records than the one which this little pamphlet embodies.

Though I shall forward a copy of this to our various newspapers, I may say that this little pamphlet is not intended as a literary effort—nor for criticism.

Halifax, December 31st, 1873.

MEMORANDUM

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PETER MAILMAN.

THE MURDER.

During my attendance at the trial of Peter Mailman,—listening day after day to the horrible details of the Murder as they were brought out by the different witnesses; and holding frequent intercourse with the prisoner in his cell, I was led to contemplate very fully and seriously the crime of murder. Nothing is dearer to a man than his life, and yet, how many doors there are to let life out!—Hundreds are passing each other in the street every day; a stab with the smallest pocket knife might fatally wound. To move among men is practically placing one's life every moment at their mercy, and yet how safe we all feel. This, if we come to think, is not all due to our laws; not the result of the security which the fear of capital punishment inspires; it is the working of a natural law which instinctively leads every man to hold sacred the life of his fellow-man.

How often are two men together alone—far from the reach of mortal eye, and yet neither as a rule, trembles in fear of death. It may be laid down as a fixed principle that only a murderer at heart can commit wilful murder. It is almost impossible to conceive the depth of wickedness to which a human being has sunk—the horrible lack of all natural feeling, when he can deliberately and in cold blood strike dead a fellow-being. The mind sickens in contemplating such a revolting act, and we instinctively thank God that, although our world is full of vice and sin, happily the propensity to murder is comparatively rare.

The details of the murder of Mrs. Mailman by her husband are unusually horrible—a more atrocious murder is not on record in this country. If his confession is to be believed, the case is slightly modified, but the facts in evidence stamp the deed as a most cowardly, heinous murder. I learned that the deceased was a very beautiful woman of her class—her appearance being much more prepossessing than that of any other woman in the locality. Alas! how dread a fate!

The circumstances of the murder and the trial are taken directly from my reports written at the time for the Daily Acadian Recorder.

THE PRISONER.—HIS CELL.—HIS APPEARANCE—WHAT HE SAYS—

PRELIMINARY FACTS, &c.

More than a quarter of a century has passed since a case of wilful murder has happened in the County of Lunenburg, and the present

one is so shocking in all its features and details, that it arouses the most intense interest.

The details are something as follows :

Peter Mailman and wife started for the woods together on the 11th day of August last for the purpose, as it seems, of picking berries. The wife carried a basket for that purpose, and Mailman carried an axe—for what alleged reason is not known. They were seen to enter the woods together by their eldest daughter—a young woman about 17 years of age. The husband returned later in the afternoon, without his wife, affirming to the children that she had gone to a certain neighbor's house; and in the evening he started for the expressed intention of meeting her and accompanying her home. It is needless to say that he did not do this. It also appears from the evidence that the murdered woman was at no neighbor's house during the afternoon. Mrs. Mailman's absence excited suspicion, and led to a search being made. The father took his two youngest children and left, giving the eldest daughter a present and telling her to keep dark and not to "put the constables on his track, for if they caught him they would hang him." He was overtaken and arrested near Annapolis as the public are already aware.

Mailman's conduct after his arrest was quite peculiar and bordered on the melo-dramatic,—in general affirming his innocence and affecting great love and regard for his murdered wife.

The body of Mrs. Mailman was found a few days afterwards in the woods within a mile of his house and near where they were seen going by the children. The body had been doubled up and pushed under the roots of a tree which had been partly torn up by the wind, and a little extra moss thrown over the exposed portions. The burial process shewed great skill and ingenuity, and, so far, reflected credit on the performer.

The body exhibited marks of violence about the head. There had been a severe blow on the temple and another on the back of the head—both seemingly done with an axe or some heavy weapon.

Mailman professed great joy on hearing of the discovery of his wife's remains. He "thanked God for this," and intimated that he "would sleep the easier that night on account of the finding of his dear wife's body." I might mention many other curious speeches of this unfortunate man which have been detailed to me by the people in the place; but will rather confine myself to my observations during a visit to his cell, which I made the morning before the trial through the kindness of the jailor, who allowed me to converse with him for half an hour.

IN THE CELL.

Once closed with a man charged with wilful murder, and with the evidence overwhelming as to his guilt, the situation is a little delicate. His cell is a very comfortable room up-stairs with a real nice bed in

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it, and a bench. I found the prisoner seated on the bench smoking, and so, to be sociable, I took out my own pipe and commenced smoking too.

We watched each other for a short time without speaking. I could easily observe the twitching, nervous movements of the man. He would get absorbed in thought every now and again, and rub his knuckles together, and play with his finger nails, while a look of intense anxiety would come over his face.

Presently he asked me to be seated, and moved to one end of the bench that I might occupy the other. I thanked him, and sat down—alongside an alleged murderer! We soon began to talk a little about the case—easily at first, but at length I succeeded in drawing him out fully. He seemed nervous about his trial, wanted a good lawyer, and hoped that he would get a "fair shake." This was said almost pitifully.

Then in answer to a question from me, he said—

"I am a poor man, and haven't much speech, but I am too honest for this thing; but I will meet it like a man. It is pretty hard to be here. [Here he became pathetic.] I have laid here for months. They have got up everything against me; but I bear it all. I look up to God. I am too honest for this thing."

Then, in reply to another remark—"I hope they will not take my life for this. They have got the wrong man—they have got the wrong man! The right man has not been got yet. God has given me sense to say this one thing."

Then he complained of his daughter prosecuting him, and how she had sworn falsely against him.

I said;

"What motive has your daughter for being so very much against you?"

Said he:

"I will tell you why, I brought my daughter up well until she was fifteen years old, and then she became her own master, and she went astray, and she kept company with a married man. Her poor mother tried to stop her, and they had fightin' and jawing all the time.—Then my daughter had a child, and if my wife told me true, she had two children, and there was where the trouble all was. And this man wanted my wife out of the way, and than wanted me out of the way too. But, thank god, I am alive yet! But they have'nt the right one yet. O! they have the wrong man! O! I tell you they have the wrong man!"

Here the prisoner became much affected and his language was quite impressive.

Said he:

"The man that takes my life for this will have no peace on this earth afterwards—and I don't believe he will ever get to heaven at last! I tell you they have got the wrong man!"

I remarked that it would be made clear some time.

"Yes," he gasped, "my life may be taken and they think it is me here, but the time will come—perhaps sooner or later."

I noticed throughout the long interview I had that he never once affirmed his innocence or directly denied his guilt. He would come to a certain point, and then evade the whole matter.

After being with him 10 minutes, I had no doubt of his guilt, and my conviction increased every moment I spent with him. He has the look of a desperate man, and his miserable attempts to quibble and redeem himself were the most pitiable I have ever seen.

Poor wretch! How I pitied him I can never express. A terrible death hanging over, a horrible remorse ever haunting him! As I was leaving the cell, he followed me to the door in a most wild and pathetic manner, beseeching me to look after his counsel, and send him word by the jailor. I felt sorry to leave him alone. It must be good for him to tell his story to the people. Sitting alone in his room and brooding over the thing must be terrible beyond conception. Truly a dreadful thing is murder—and a horrible thing is a murderer!

THE ARRAIGNING OF THE PRISONER—SCENES IN THE COURT.

LUNENBURG, Oct. 17.

This morning at 10 o'clock Judge DesBarres took his seat on the bench at Lunenburg Court House. The front door had been locked up to this time, and a great mass of people were gathering awaiting its opening. When once the key was turned, the scene was indescribable. The rush was something perfectly awful. There seemed to be a mad surging of human beings and as one after the other was wedged in, they rushed and scampered and scrambled for a place. His Lordship affirmed that he had never seen such unruly actions in all his long experience on the bench. Great crowds had to remain outside. Hon. John Creighton, Q. C., and W. H. Owen, Esq., appeared for the Crown. Hon. H. A. N. Kaulback, Q. C., for the prisoner.

THE ARRAIGNMENT.

A few moments after the opening of the Court, Peter Mailman, the prisoner, was brought in and placed in the box. Every eye was upon him. Through the kindness of the jailor, he had got quite a decent suit of clothes. He looked very anxious, but remained somewhat cool. The Prothonotary read the indictment as follows:

"The Jurors for our Lady the Queen, upon their oath present, that Peter Mailman, of Pleasant River Road, in the county of Lunenburg, farmer, on the 11th day of August, inst., in the year of our Lord one thousand, eight hundred and seventy-three, at Pleasant River Road, aforesaid, in the county aforesaid, did felonously, wilfully, and of his malice, aforethought, kill and murder one Mary Ann Mailman, the wife of the said Peter Mailman."

He then put the enquiry "Are you guilty or not guilty?" the prisoner answered in a clear and firm voice, "I am as innocent as an unborn babe!"

'When will you be ready for trial?'

'If my witnesses be here—'

'When will you be ready for trial?' (sharply)

'If my witnesses get here, and my counsel says so, I—I'

Mr. Kaulback, Q.C., counsel for prisoner then rose and stated that all the witnesses for the defence were not here and could not be got, and asked that the case be postponed till Monday. Mr. Creighton, Q. C., who acted for the Crown, stated that every means had been taken to get the witnesses here. He had signed the subpoenas for the prisoner's witnesses, which made them at the expense of the country. Mr. Kaulback stated that the prisoner had no money, and that all the witnesses had to be brought through the kindness of friends and the Sheriff. There was considerable discussion about the matter, during which it was stated that some of the witnesses that came to town were so poor that they were unable to find lodgings in town, and were begging to be allowed to go away. It was also affirmed by the counsel for the prisoner, that the feeling in the County was so strong against the prisoner, that no man could be got to go for the female witnesses, fearing the consequences.

At length it was decided to go on. About an hour was consumed in drawing the jury. The prisoner's counsel did not object to any peremptory, but he objected to all, 'for cause.' This resulted in all the ordinary formula of questions, such as:

'Have you heard or read anything about this case?'

'Have you formed any opinion as to the guilt or innocence of the prisoner?'

'Are you prejudiced in any way, for or against the prisoner?'

'Can you try him fairly, according to the evidence, without any bias?'

I noticed that most of the jurors were very ready to deny all prejudice in the matter. Instead of being anxious to be relieved of the responsibility—an exceedingly grave one—they seemed extremely solicitous of enjoying the honor—and they were willing to sacrifice their own feelings in order to perform their duty to their country. Their names are as follows:—James Brown, Foreman; James Seaboyer, Edward Deamon, John Maxner, Benjamin Eisenhauer, Martin Smith, George Winter, Joseph Smith, Benjamin Conrad, Henry Conrad, John Randall, Joseph Wentzel.

THE TRIAL.

At 11.45 a. m., Hon. John Creighton, Q. C., rose to open the case for the Crown. He asked the jury to dismiss all prejudice, and, avoiding any rash or hasty conclusion, judge only according to the

evidence. This was the most important case that had ever been tried in the county. He had been living in this county for over sixty years, and had never yet known a man charged with cool and deliberate murder. This was not an ordinary case of taking of life in the heat of passion—this man is charged with wilfully and in cold-blood, murdering his wife, whom he had promised to love and protect. There had been a murder in this case—there can be no doubt of this. This woman might have killed herself, but she could not have buried herself. This is clear.

There was no direct evidence that the prisoner knocked his wife's brains out. But, in few cases of murder, is there any direct evidence. Men who take life, generally take care that no eyes behold the nefarious deed. But in most cases of conviction, circumstantial evidence is deemed sufficient. The learned Counsel read some high legal opinions in support of the force and efficacy of circumstantial evidence. The prisoner, since the time of the murder, had attempted many stories and excuses, every one of which were false. He had never seemed in the least affected by the loss of his wife. The prisoner and his murdered wife left together for the woods on the 11th of August. The Counsel then proceeded to give a detailed account of the various subsequent incidents bearing on this case.

EXAMINATION OF WITNESSES, ON THE PART OF THE CROWN.

Daniel Carver was the first witness: Live on Pleasant River Road—about 2 miles from the prisoner's house—was about 1-4 mile from his place on August 11th—saw the prisoner at his own house, about 3 o'clock, p. m.—saw his wife about 1 o'clock—did not see prisoner at 1 o'clock—did not see prisoner and wife together at 1 o'clock—saw prisoner coming towards the house in a different direction from where his wife was found, at 3 o'clock—did not see him carrying anything—prisoner kindled fire near at 3.30 p. m.,—saw the wife lock up hens at 1 p. m.,—never saw her afterwards—searched for the body—George Uhlman found the body—I saw and examined body—she had a woollen dress on—do not know what her underclothes were.

Cross-examined by Mr. Kaulback:

The body was found about a mile from the house—saw prisoner return in an opposite direction from where body was found, did not see him have anything in his hand, did not notice particularly—the fire was kindled on the property of the prisoner, he (prisoner) might have intended to make a clearing—he had had a chopping there, saw nothing more of Mrs. Mailman than he had said on direct examination—am personally acquainted with the prisoner, he was not a real good man, he had an ugly disposition.

Angelina Mailman, sworn—I am daughter of prisoner, have always lived with him, Mary Ann Mailman, deceased, was my mother, they lived together as man and wife. I recollect the 11th August last, it

was on Monday, my father and mother left the house on that day, my father shut the hens up before they started, he locked the house up with a padlock—and went down towards the brook, he had an axe and she had a basket, the basket was white with red stripes in it. I was about a quarter of a mile from the house when they started—I could see them distinctly, I was on clear land; I fancied they went to pick berries, wild pears; my brother and sister were with me and saw them, small children. I returned to the house before either of my parents and found the door locked. Albert Mailman came to house before father returned, he said he came from his home—about a mile from ours. I saw him coming from the direction of his house about half an hour before my father returned, know the direction in which my mother was found. Mailman did not come from that direction. I got into the house through the window. I told Albert Mailman to draw the staple and let the children in: Mailman was in the house about half an hour before father came home and remained about another half an hour after father returned when he started from the Branch. My father had an axe and a basket when he returned, it was the same basket my mother had when she went away—will swear to that, there were wild pears in the basket, about three and a half quarts, was surprised when father came home without mother, I asked him where mother was, answered that 'she had gone up to Ben Baker's,' he remained in the house a half an hour or more and then went out and set fire to the woods, in a different direction to which my mother was found. He came back from there a little before sunset, he went away again in the evening—after dark—said he was going to Ben Baker's to bring mother home: he returned that evening between 11 and 12 o'clock, P. M. My mother wore a woollen dress—a calico underskirt, and a little boy's hat; saw my mother put the calico skirt on in the morning; the calico skirt was not in the house after my mother went away till Wednesday morning, when I saw it at the head of papa's bed: it was rolled up. My mother always hung up her clothes. Nobody except my father and the children had been in the house from Monday till Wednesday morning. On Tuesday morning asked papa again where mama was; he replied that she had been hired to reap with Ben Baker, that she was to get \$1 per week, and had hired for a fortnight. On Thursday he went to Bridgewater and took with him a squaw named Mary Glode, and brought her back with him; the squaw stayed all night at the house. While my father was at Bridgewater Ben Baker came to the house; he wanted to get my mother to reap for him; was sick in bed when he came in; he asked where my mother was; told him that my father said she was at his place; he said she had not been there since the previous Sunday. When my father returned with the squaw they were both pretty tight, and each had a bottle full of rum or gin. When Ben Baker told me that my mother was not at his house I was alarmed; when my father came home that night I told him that he had told me a story—that Ben

Baker had been here and told me so; I told him I believed he had killed her; he said if she was not there she was either at Waterloo or at the Branch. I told Ben Baker I believed he had killed mamma. Saw my uncle David next day (Friday); he knew my mother was missing. [Here witness broke down and wept; she had kept her countenance thus far very well.] I told him same as I told Ben Baker. On Friday father went to the Branch to bring mother home, as he said. He came back without her, and said that my mother was at Emeno's reaping rye. My sister told papa that I told Ben Baker I believed he had killed mamma; he said he would go to Esquire Baker's and get me arrested; he went away taking both the children with him; returned about 4 o'clock; left again that night after dark taking the two children with him; he took his clothes with him; six yards of Kersey, six and a half yards plain cloth, 9 yards printed cottons, half loaf of bread, some Indian meal, 2 quilts, and my brother and sister's clothes; said he was going to Waterloo and going to stay 8 days to George Deamone's; I was in bed when he went away; my father bid me "good-bye" and said that to-morrow (Sunday) morning, there would be some constables come after him, and when the constables came I should speak all in his favor and should say nothing about my mother; he said "if the constables got him they would hang him—but they would hang his two children first;" my father and my mother lived disagreeably together; he often beat her; sometimes with an ox-whip; he had threatened to kill her; a short time before my mother's disappearance—about a fortnight—I heard a disturbance between them one night; he attempted to choke my mother; and if it wasn't for me he would have done it; there was no partitions in the house; two beds in same apartment; father and mother slept in one, and the children and myself in the other; I heard my mother cry out; and got up and lighted the lamp; saw he had his hand on her throat and his knee on her breast; I was out gathering wild pears same afternoon that my father and mother went to the woods.

Cross-examined by Mr. Kaulback—I know the nature of an oath, learned it from my teacher. My mother was over to Ben Baker's on Sunday and promised to reap for him that week.

Mr. K.—Was there a party at Mr. White's on that Monday night?

A.—Yes.

Mr. K.—Was not Albert Mailman at that party, and did he not come to your house on Tuesday morning?

A.—He came about 5 o'clock and left after daylight.

Mr. K.—Did not Albert Mailman sleep with you that night?

A.—None of your business.

I know Mrs. Albert Mailman.

Mr. K.—Did Mrs. Mailman come to you sometime ago and beg you not to seduce her husband, and implore you to refuse to allow him at the house?

A—I was not brought here to answer about Albert Mailman's wife. I came here to answer about the death of my mother.

Mr. K— Did you answer Mrs. M. that you had kept company with her husband, would do it again, and break up her family before one year?

A— No. I deny it.

Mr. K— If you had said it, would it, have been true?

A— No it would'nt.

Mr. K. 'Are you in the habit of getting drunk?'

A. 'That's nobody's business, and I wont answer it. I owned only one pair of boots; I gave them to my sister on the night when my father and the children went away; did not get a pair of boots soon after; Albert Mailman never gave me any boots; there was only one basket in our house; it was a large basket—bigger than a man's hat; it was white with red stripes; never counted the number of stripes; my father requested me to take the children with me on that Monday when I went berrying; my father and mother did quarrel.'

Mr. K. "Was not your own illicit conduct with Albert Mailman the cause of this quarrelling?"

A. "I wont answer such a question. If you want to know, go and ask mamma." It has been about a year since I knew of my father beating my mother; he was cross and threatened her continually up to the day of the murder.

(The Court adjourned here for the day 18—there are no more incidents to notice in connection with the trial so far.

SATURDAY, OCTOBER 18th.

Joseph Baker, sworn—I first heard that the deceased was missing on Friday, the 15th August last. I heard it through David Frossel. I told him not to be too fast, but to make enquiries. I commenced to search for Mrs. M. on Sunday, the 17th, in company with two or three hundred other persons; began the search in the burnt woods; searched on Sunday, Monday, part of Tuesday, and on Wednesday; found nothing in the burnt woods; commenced the search on Wednesday in the burnt woods again; left burnt woods and went to the western side of Branch River—this was in an opposite direction from the burnt woods—separated and went down the river. I and George Uhlman and others went together, found some little pear trees cut down—apparently with an axe—shortly after we found tracks. Uhlman first noticed them, and called to me. We thought they were tracks made by a man and woman on a swamp on clear ground made bare by the uprooting of a tree. I looked particularly at the tracks—they were very distinct. I discovered nothing noticeable in them; the tracks pointed down the river, not in the direction of the body. We followed down the river, found the same tracks, and other trees cut down outside of prisoner's land. We crossed the river and

saw a tree cut on the eastern side, and followed up stream in the direction of prisoner's house; saw a place away from the river where brakes had been beaten down. Uhlman and I discovered this; we remarked the place and went on, came to a swamp, discovered the same large and small tracks; followed them about twenty rods; saw some meadow grass and moss trampled down: Stood there for an instant, when Uhlman said, "Joseph, if the deed has been done, this looks like the place." We cast our eyes about searchingly, when Uhlman said, "What's that, Joseph?" I looked, then replied, "That is what we are looking for!" Uhlman then exclaimed, "MY GOD! THE WOMAN!" (Here there was breathless silence in the court. Every body was visibly affected, save the prisoner, who looked as stolid and indifferent as ever.)

We discovered the body of the woman—Mrs. Mailman. It was lying partially doubled up under the root of a tree that had been partly blown over, the roots of which had raised up the moss about it, leaving a hollow cover placed just beneath it, just large enough to hold a body, which had apparently been put in head first, and the feet crowded in last. The opening was partially concealed by a handful of moss. Part of the dress covering the back of the body was exposed through this opening; one foot also visible. There were stockings on the feet—no shoes nor hat—did not uncover or disturb the body until the Coroner came. I saw the left side of the face, and knew the body to be that of Mary Ann Mailman, wife of Peter Mailman. (Sensation in court—prisoner imperturbable.) I went for the Coroner—saw the body removed to Mailman's house, where Dr. Croucher examined the body. She was taken from under the tree and put in a coffin and carried to Mailman's house. When the doctor was examining her I saw a wound on her head. The place where the body was found was very secure for concealment.

Cross examined by Mr. Kaulbach—When I saw the others discovered the tracks, we examined them and thought they were the tracks of Mailman and his wife. We partly formed this opinion, because we understood they had gone this way in search of pears. After we found the body we could find but one track going from the place—a large (man's) track. Saw tracks on east side of the river where the pear tree was cut. Saw no further tracks until we came to the swamp. I don't know of any other persons frequenting this place for pears. I have heard the prisoner using harsh words to his wife. I know the witness, Angelina Mailman, and from my knowledge of her character I would believe her oath. We discovered but one track leading from the body after we found it. We followed it for six or eight rods—a large track. We thought it that of the prisoner. I said, "Here is where the scoundrel went after he killed her."

Benjamin Baker, sworn—Saw Mrs. M. last on Sunday before she was missing—went on Tuesday to Mailman's house and asked Angelina for her mother. She was surprised to learn she was not at my house.

I never told Mr. Kaulbach that I had taken home Angelina drunk. I never saw her drunk. I saw the body after it was discovered under the root of the tree.

Cross examined by Mr. K.—I have not seen or known anything against the witness, Angelina Mailman.

George Uhlman, sworn—Knew deceased—searched for her body on Wednesday—examined burnt woods till convinced that she was not there, then went down the river—west side—saw pear tree cut. Joseph Baker and others were with me; followed river about a mile down stream; saw tree cut as I proceeded; saw a small track as of a woman, and a man's track—found them at intervals for about half a mile. Joseph Baker and I then crossed the river to east side, and went up stream; saw a spot where tracks had been travelled over and pressed down as if done by a woman's skirt passing over them; went a few rods further and came to a swamp, and there saw tracks of two persons; one large, other small; extended into swamp about 20 rods, when we came to a spot about 5 feet in circumference, having the appearance of being trampled down, as if persons had rolled there. I got on my knees to examine the leaves, and saw a man's track continuing in the direction we came. I here discovered body of the deceased, and called to Mr. Baker. "What is this?" He said, "THE LOST IS FOUND!"

I saw the body of the dead woman, but did not know her then as wife of prisoner. She had nothing on her head, nor shoes on her feet. The place where we found her was excellent for concealing. The hole under the tree I could span with my arms. In this hole we discovered a body. A person would be apt to pass the place without noticing it.

Cross-examined by Mr. K.—Following the tracks in a straight line from the body, I cannot tell where they would come out. The woods were strange to me; I was the first to discover the tracks on the west side of the river, and called to Baker and others. I examined the tracks closely, and my opinion was, they were those of the prisoner and his wife. The footmark on the moss track was somewhat as if there were no heel on the boot. The other had but part of a heel on; don't know whether it was right or left boot that had no heel.

Dr. J. S. Calder, sworn—Am a Coroner. Was called upon to hold an inquest on Mary A. Mailman, deceased. I first saw the body in the forest at quarter of a mile from prisoner's house. It was in a natural cave under the roots of a fallen tree, which was covered by a growth of moss and turf. The body was removed to Mailman's house. (Here prisoner's two young children enter court house—little boy and girl). Deceased had on a woollen dress and woollen stockings. Body not stripped in my presence. Held an inquest over body of deceased. Employed Dr. Croucher and Mr. Cox to hold a *post mortem* examination of body. I examined head before body was removed to the house; found blood oozing from back and side of head. Did not

myself discover cause of death. The *post mortem* was held while I was getting evidence from Angelina Mailman, who was sick. The body was crowded into hole under the tree.

Cross examined by Mr. K.—Joseph Baker called upon me to hold inquest. He with others led me to the place. This was a natural place, save the additional covering of some moss and grass. When I first came to the body no part of the clothing or person was exposed to view.

Robinson Cox, sworn—Am a medical student—have attended Dalhousie College two sessions. Was called upon to assist at a *post mortem* examination of the body of Mrs. Mailman. The head was dissected. I discovered a fracture of skull on back part or base of head. There were marks of several blows apparently made by a blunt instrument. A piece of skull was entirely loose—had been driven in. The pole of an axe would probably make such fracture; have no doubt the wounds were sufficient to cause death. I assisted in stripping the body; no other wounds discovered. She wore a grey woolen dress, a *chemise*, drawers and stockings. Saw other marks of blows on the skull; no other fractures. Can't say if these others were sufficient to cause death.

Cross examined by Mr. K.—First saw body in woods—heard Dr. Calder examined. We both went to body at same time. I could see part of body by stooping down and looking into hole pointed out to me. I could see part of clothing and her feet. She had on stockings, but no shoes. Another blunt instrument besides an axe might have made the fracture. Inquest was held on 21st August last.

Doctors Calder and Barnaby testified their belief in the competence of Mr. Cox to give an opinion as to cause of death.

Josiah Fancy—sworn. I assisted in the search for the body—saw tracks along the brook—examined them particularly—helped to bring prisoner from Greywood—examined his boots on the way—saw some large headed nails in his boot heels—when searching for the woman. Saw in the large tracks marks of the large heads of these nails in the heel—about half of heel was off one of prisoner's boots. Prisoner told me at Bridgewater after I had given him up to constables not to go home until he had seen me—went to prisoner—he told me to go home and hunt for his wife. I replied I would do so if he would tell me where to look—he said to go from the house that way (pointing in the direction in which the body was found) to where lots of raspberries grow—if she was not there to go about the swamp where little tea-berries grow.

We found the body in a swamp where there were some of these berries, and I remarked to those about me "these are the berries Mailman had reference to." I and the constables started for Greywood on Sunday morning—got there about 9 p. m.—went to George Mailman's house (prisoner's brother)—reconnoitred the house—the dog barked and the prisoner came out of doors without coat or hat—

stood awhile, then started toward the barn—we then went into the house and enquired for prisoner. George Mailman said he had been there and gone away—we went away and returned next morning—met George Mailman at the door who said prisoner told him that I should not come into the house or there would be “bad work,” but that Solomon Baker might come in. B. went in, brought the prisoner, and he returned home with us.

Cross-examined by Mr. K.—Prisoner offered no resistance—rode in his own carriage behind us, our waggons were never separated more than a few rods; he did not express a willingness or desire to search for his wife. Am acquainted with Angelina Mailman—know nothing against her character—would believe her on her oath. I did not make any statement to you that I believed Mailman to be innocent, or that I would not believe Angelina on her oath.

Edward Crouse—sworn. Mailman came to my house about a week before Mrs. M. was missing—said he was going to Greywood and asked my wife and I to accompany him; my wife said, “Mrs. Mailman must go with us.” Prisoner said: “No, you need not expect that, for she is on her last legs. She isn’t well; she’s gone away from home now, and she’ll be going away this way and be missing some day, and nobody will know what becomes of her.”

Cross-examined by Mr. K.—It seemed to me from the conversation that he did not think much of his wife—it did not impress me at the time, but afterwards his words came back to me with force—prisoner was always a good neighbor to me and never did me any harm.

Jacob Rafuse, and Benjamin Fancy testified briefly in regard to seeing the prisoner coming from the woods on the afternoon of the murder with a basket, and what seemed to be an axe or stick on his shoulder.

Court Adjourned at few minutes before 6, p.m.

MONDAY MORNING, OCTOBER 18.

Mr. Kaulback rose this morning and stated that he had been refused admittance to the children of the prisoner, though they were witnesses for the defence; that he had gone to the house where they were stopping yesterday, and was told that he could not see them; that they had been refused admittance to their father, though he desired to see them.

His Lordship expressed his surprise at this statement, and directed that the prisoner and his counsel have full and free access to the children.

Albert Croucher, M. D., sworn—Am a medical man; was summoned by Dr. Calder, professionally, to hold a *post mortem* examination of the deceased, Mary Ann Mailman—(witness described the state in which he found the body under the roots of the tree, substantially like the statements of the other witnesses). The body was removed

from the cavity, and put in a coffin; no marks were made on the body from the time of its removal till the *post mortem* was held; examined the body in the prisoner's house; Mr. Cox assisted me; found fracture of the skull in back of the head; found a small piece of bone detached from the skull, and a fracture extending all through the skull into the brain; the bone at back of head separated from the side bone; was a mark at side of head as if struck with a blow, and another over the eye; no other marks; in my opinion the fracture was caused by a dull instrument; the pole of an axe would make such a fracture; must have been very severe blow, indeed, death would immediately ensue; life had probably been extinct at time of examination as many as ten or eleven days. (Witness described deceased's clothing.)

Cross-examined by Mr. K.—Pole of an axe might make a wound of that kind—any other blunt instrument might make such a fracture; might not take 9 or 10 days to decompose a body in August, but body was in a very cool place; body could not have become so decomposed in such a place in less than 10 or 11 days; knew the woman and had attended her; have not attended her for a year.

Albert Mailman, sworn—Am a married man; have four children; I live at Upper Branch; recollect 11th August last; was home that day till between 2 and 3 o'clock, p.m.; was mowing and spreading grass; Angus Baker was with me; Rafuse was home that day; we talked together; left home between 2 and 3 o'clock to go to Tim White's to a party; had my fiddle with me; White lives on Pleasant River Road. Went to Hirtle's before I went to White's; prisoner lived in direction of Hirtle's; passed the prisoner's door; two little children outside of door; Angelina was inside; the door was locked with a padlock; hens were shut up; went into the house, and Angelina told me to draw the staple. I did this and went in, and the two little children with me. Asked Angelina where her father was. She said her father and mother were pear picking; remained in house nearly half an hour; was going away as Peter Mailman came in, at about 4 o'clock; he brought a basket of pears in; axe in other hand; came and offered me some pears; I eat a few.

Angelina said to prisoner, "Where did you leave mamma?" He replied, "She has gone to Ben Baker's." Angelina said, "I don't believe it." He said, "If you don't want to believe it, you can go to h—ll." Prisoner turned round and walked out—returned in a minute—basket was good-sized, with handle—had red stripes—had about three quarts of pears in it—saw no other basket in the house—Angelina said, "There was something more than common"—prisoner made no answer—I left my fiddle there and went to the Branch—prisoner said, before I left, he had to go and set his chopping on fire—remained here till sundown, then went to White's, stopping at prisoner's house on the way—found him home—took my fiddle and started for White's—remained at White's till nearly daylight—left White's about 5 a.m., and passed prisoner's house and went home—went in

prisoner's house a short while, about $\frac{1}{2}$ hour—prisoner and three children at home—up and a light burning—prisoner told me previously that he was going that evening to meet his wife at Ben. Baker's.

On Friday afternoon after I went by prisoner's house again, in company with my brother and John Armstrong; went in; prisoner had just come home from the Branch; was unharnessing the horse; we asked him where he had been; he said he had gone thither to fetch his wife home; I asked if he did so; he said, "No; it rained too hard. I am going down to-morrow to fetch her." I supposed his wife was at the Branch this time; at Emeno's; next day several of us went down to the Branch to see if Mrs. M. was there. I asked some of Emeno's people; they said she was not there; stayed round the Branch till night, when I went home, going to the house of Peter Mailman; called in; prisoner was getting ready to go away; he asked me what was the news at the Branch; I said, "Not much, only your wife is not there"—he did not say much then, only that he was going to Waterloo; he wanted me to buy his pig; told him I had not money enough—said he, "How much have you got?"

I gave him what money I had, and he counted it and said: "I haven't a hat fit to wear," and wanted me to sell him my hat. I told him he might have it for \$1.00. He took it, and said, "the pig is yours." He then began to get off, taking various things into the waggon with him—bread, meal, clothes, &c. It was then dark. I saw him leave with the two children: didn't say when he was going to at Waterloo. An alarm was raised on this day about Mrs. Mailman, and search was commenced; prisoner did not know they were searching; don't know where prisoner went that night; when ready to depart he went to the bed where Angelina was and said to her, "To-morrow there will be a lot of people here, and if they ask you where I am, tell them 'at Waterloo.'" He said, "they will be after me, and if they get me— Speak a good word for me and I'll buy you a good present. If they get me and hang me they must hang my two children first." He then said—"I won't give the two children up, they must go wherever I go." Going away he said—"I have to leave my country on account of these d—d Frossel's"—he then left. His wife's maiden name was Frossel.

Cross-examined by Mr. Kaulback—Live about one mile from prisoner's house. It is about $2\frac{1}{2}$ miles from prisoner's house to Branch, and to White's it is about one mile or more. No direct road from my house to Hirtle's through the woods, except by the way of prisoner's house. The distance from my house to Hirtle's is about $3\frac{1}{2}$ miles. It is further than Hirtle's to White's. I stayed at prisoner's house night prisoner went away with his children, at the request of his daughter, Angelina, who was afraid to be left alone.

I stayed at Mailman's house on Friday—at prisoner's own request.

I will swear he requested me to stop. (Prisoner here looked witness sharp in the eyes and pointed his finger towards him and shook his head.) Began to search for Mrs. M. on Saturday at the solicitation of Angelina—(witness detailed the circumstances of his search, but nothing of importance was elicited.)

I saw no axe out of doors at prisoner's house on Monday when I was there. Did not go for the wild pears during or about the time Mrs. Mailman was missing. Have seen Mary Glode (Indian woman), did not see her on Monday 11th August. Saw her but once since she encamped in that neighborhood, about 1½ mile distant from prisoner's house, seen prisoner and wife have a couple of little rows—some time ago; had a big row about a year ago—not about Angelina and me, prisoner never obliged anybody to his own hurt. In the row between prisoner and his wife he got an ox-whip and beat his wife—never took Angelina to a party at Getson's, never went home with her from Getson's.

Re-examined by Mr. Creighton—Prisoner beat his wife severely for ten minutes—she cried out.

David Frossel sworn—Was at the inquest on body of deceased—saw trees cut down in woods near where body was found, they had three little flaws in the cuts as if there were three little gaps in the axe—found three trees cut with similar marks—on day of inquest, saw an axe corresponding with the gaps—such axe would make such cuts as I saw on the trees—saw the axe in Peter Mailman's house on Friday before body was found.

Cross-examined by Mr. K.—Was examined at preliminary investigation at Bridgewater—said nothing about the axe, because not questioned; this is not a "got up" story; showed these cuts to Joseph Baker, he recognized them—paid no money towards carrying on the trial—am too poor man—employed Mr. Owen to assist in this case—expect to pay him.

(The witness is a brother of the murdered woman.)

Joseph Baker, recalled—(Witness brought in axe and a piece of wood. This made quite a sensation in the court, as there had been great interest in the axe by which the bloody deed was committed. I examined it carefully, and the sensations I experienced will not soon be forgotten.) This witness identified the axe; the marks on the chips of wood were shown. (There was breathless interest in the court at the time.) Got this axe in prisoner's chipyard; saw it there on the Monday previous to the body being found, and observed little gaps on it; axe not now in the same condition as when I found it, the corner has been blunted a little; the flaws in the cuts would be caused by gaps in the axe; the axe, when I first saw it in the yard, would make gaps like those in the piece of wood.

Cross-examined by Mr. K.—Will swear this is the same axe I found on that Monday; saw this axe on Thursday after; believe it to be the same axe. It has been in my brother's possession since.

Never gave directions that counsel (Mr. K.) should not see prisoner's children; never promised to bring them here. They are here; I brought them, and pay for them here.

Hon. Mr. Kaulback, Q. C. opens defence.

With your Lordship's pleasure. Gentlemen of the Jury:

I now rise to defend the prisoner at the Bar.—His Lordship altho' just expressing a desire that no time should be lost, has very considerably said that he would not press me to open defence at this late hour of the day when we all must be fatigued. Especially as I stated that I did not think that the case on the part of the Crown would terminate so early. Yet I shall proceed if you gentlemen feel able to give me a short attentive hearing.

(From one of the jurymen "Go on.") I said Gentlemen "that I rise to defend the prisoner." But in doing so I feel my utter inability to equal the momentous responsibility resting upon me, or even to do common justice to the defence and the prisoner at the bar.—The Life or Death of this man is now in your hands—and oh! I beseech you! to consider his case with clear minds and unbiassed judgments. Each of you have been challenged for this cause, and have sworn and declared that you are free from prejudice or of pre-judgment. I ask you, think well upon that oath, and on your knees to-night ask your God to give you clear hearts and right understandings so that you may come to a *right judgment*, which I trust may result in Mr. Mailman's going to his home with dear little children whom he loves—rather than to the scaffold—leaving for his family but a blasted name and a legacy of disgrace. See that you make no mistake—a lamentable mistake. If you err or misjudge even through unconscious prejudice, *you, and your country*, which has invested you with your present high functions, are guilty of nothing less than social murder—for which you must answer to your conscience, to the prisoner, and yet more than all, to a merciful—yet exact and scrutinizing God. I earnestly entreat you to dwell patiently with me during the remainder of this trial—my duty and the fearful responsibility resting upon me are not light or easy. I have been and now am painfully impressed with the conviction that some explanation may be omitted, some argument left unuttered—some evidence passed over without comment, which, if properly noticed and urged upon your attention—might influence your judgment and relieve the prisoner's life from all uncertainty and doubt. His life is too precious and sacred to be left in my hands. The stake is too dear for him to put confidence in any man—the privilege of life is as dear to him—and the horrors of death as great and dreadful, as to any of us. This is not all. There are circumstances in, and peculiar to, this case which make it of unusual difficulty and embarrassment. He is not only destitute of all that wealth, favor or influence might do for him, but, as is well known, bereft of the sympathies of the public—which has been manifest even during this solemn trial—and seemingly influenced the Counsel for

the Crown—with a thirst for prisoner's conviction—whilst his victim is by law bound hand and foot and can say nothing in his defence.—Therefore it is that I call on you to weigh with greater caution and mercy the evidence for the defence, give to every slight circumstance full consideration. I must frankly admit that a horrible crime has been committed in our County. That the wife of the prisoner has, beyond much or any doubt, been murdered. The public mind has been excited, and with it the natural desire for vengeance on the guilty. This strong and wide-spread feeling ripening into prejudice, adding greatly to the weight of the responsibility which I have felt so painfully in this case, and compelling me to struggle against the tide of public sentiment in order to gain at the out-set an impartial hearing and a fair trial. From the out-set the prisoner has been cruelly treated—not content with his arrest and safe confinement in our County Jail here, under warrant, in August last, then, and yet being an innocent man as the law regards him, by directions of a Justice of the Peace, he is improperly and imprudently taken from thence and manacled and conveyed 12 miles to the Drill-shed at Bridgewater, at the mercy of an excited people by the way—going and returning—and the fury of thousands of people there gathered under intense feeling and excitement which might have at any moment spontaneously burst forth, imperilling the public peace and even the life of the prisoner. So imprudent was this course, that I was advised not to attend the examination. And even when there—not even the fear of evil consequences restrained me from performing my full duty to the client on the examination, and depriving him of his rights, the advantages which he might have gained by a full and searching enquiry under the free institutions of our country. This is not all the injustice done him. He has not only been improperly prejudged and convicted by the press of this province which has declared “that hanging was too good for him.” He has been represented as a monster—the public taste has not only been watered, but I might say deluged, with calumnies against the prisoner. He has been held forth to the world—as the murderer, and that under circumstances at which humanity stands aghast, and the vilest heart would recoil—and that he revelled in his guilt by drunkenness and debauch. Doubtless all of you have heard or read these unfounded and, to say the least, cruel and pernicious tales. Under such circumstances is there not cause to fear that the ends of justice may be perverted—and that even now during this grave and solemn investigation when the issue of life or death are with you the jury box may be affected, although unconsciously by these organs of public opinion—which ought to be the preservers of public liberty and the safe-guards of our institutions—*Trial by Jury*. I ask you to start in this case with the presumption that my client is innocent. It is only that with which the law clothes him—and you must and are bound to follow the cause with hearts mercifully inclined—for mercy is in a very important

sense a part of the law—and the will of God, who has declared such *in His word*, and which the Founder of the Christian religion came to teach—and if after a due and full consideration of all the circumstances you shall have a doubt—the law orders—and your own feelings must impel you, (if you are not prejudiced) to give the prisoner the benefit of that doubt. And even now at this stage of the trial when all the evidence that could be raked and scraped together, and forced in on the part of the Crown with so much ferocity, is before you, I feel I am justified and right in saying—that you could come to the conclusion, that all the circumstances stated and given in evidence might be true—and yet the prisoner be innocent.

I could even now challenge the Crown,—and do and shall its Counsel, to prove the most material part of their case—any immediate preceding motive or probable cause for this act—without that essential element. You cannot in a case like this, even legally infer the prisoner's guilt. Common sense and our own knowledge of human nature force us to conclude that it is at least improbable that there should be crime without a motive. The nature of man is such, that he does not set about any crime without a motive. The failure of evidence of motive must help you in favor of a verdict of innocence.

This charge is made up of the very worst evidence that can be produced against any man. It is entirely circumstantial—each particle of which may be fallible—and yet you are asked upon such evidence to launch this man into Eternity and a felon's grave! The result of all circumstantial evidence can at most be but probability, not certainty, as probability of guilt, *not certainty* of guilt—and probability of guilt arising from circumstantial evidence may ultimately—too late to save life—be discovered to have been ill-founded. I will stop now, but in my closing address will give you, case upon case in which the lives of innocent persons have been sacrificed. Will you risk the chance of adding another to that number! And stain your hands in the blood of your fellow-being and brother by God's creation! Pause and hesitate! And remember there is another judgment seat—and that with the judgment you now judge—you shall hereafter be judged. As the day is now far spent—I shall reserve for my close, and ask you to review with me, the intrinsic improbabilities and the incredibility and insufficiency of the testimony on which the case as now before you is based, and shall now proceed to give you some outline of our defence and evidence. And in this again I must ask your kindest indulgence. I do not believe that ever Counsel labored under such difficulties as I now encounter. When, I ask, before this, has it been required of prisoner or his Counsel, on a charge of such magnitude, to be instantly forced to trial upon arraignment—in the absence, as stated, of material witnesses for whom subpoenas have been issued—and for whose attendance all possible efforts by the prisoner have been made—when or where has it occurred that when over twenty witnesses have been regularly subpoenaed for the defence—and

that the counsel, up to this stage of the case has not been able to see and converse with any of them? When has it occurred that the children of the deceased have been secreted, so that not only the prisoner, but his counsel have been forcibly resisted from all communication with them—and that up to the moment that they are required to give testimony? May I not well pause! and ask the question—In what age do we live? Is this the nineteenth century of the christian era? If so where is the love and the mercy shown here?

I shall not venture to make one assertion to you which I am not instructed can be proved if the witnesses appear and discharge impartially and rightly the responsibility resting upon them. The witnesses from Greywood are to prove that the prisoner came there at the time in accordance with previous arrangement between them—and from motives quite independent of the crime charged against him.—(Here the counsel went through the list of his witnesses, stating what evidence was expected of them.) You now see that we do not pretend to unveil this mystery—as yet known only to God and the perpetrators of it. We shall introduce the prisoner's traits of character so far as they relate to the nature of the charge and his conduct and actions during the interval between the alleged murder and his commitment to jail. That the main witnesses were infamous and that no reliance could be placed upon their oaths, and some evidence contradictory of crown witnesses. It amounts simply to this, that the circumstances relied on by the Counsel for the Crown are not established, and even if they were fully established—do not confirm that hypothesis of the defendant's guilt—in other words that the evidence might be true, and yet the defendant not guilty of the crime alleged against him. It is quite natural that we all should feel a desire to punish the perpetrator of such a horrible crime. But you must take care that no innocent man is made a victim, by rashly overleaping the rules of law and of evidence. I shall not now argue the question of capital punishment. I shall but call your attention to a higher law and implore you by its solemn realities and certain judgment to come, that you be careful how you administer this human law—and the responsibility which you draw on yourselves.

If the Queen's Counsel alluded to it to inspire you with firmness to execute the mandate of stern justice, with equal propriety may I remind you of them, and bid and implore you by a higher law to be open to the dictates of mercy and humanity. Think of your responsibilities now in the sight of the Almighty. For you to deprive the prisoner, one of your fellow-beings, a brother of the human family, of his life, that life which you never gave and perchance are invading the prerogatives of Omniscience in assuming to take away. Remember—yes, let each of us remember that we now act in the open immediate presence of our Creator and God. But a thin veil only separates the things seen from those unseen and eternal, and whilst I speak and plead to you—and you listen and resolve, a judgment is

going on in Heaven of our thoughts, feelings and motives. And when that solemn day—your day of trial shall come—may the judgment which you give in this matter, help to entitle you to the benediction “Blessed are the merciful for they shall obtain mercy.”

Prisoner's counsel spoke for about one and a-half hours with good effect and received the utmost attention.

At the conclusion of Mr. Kaulback's address the Court adjourned at 5.15, p. m.

WITNESSES FOR THE DEFENCE.—October 21st.

John Fancy, sworn.—Know the prisoner—have known him a good many years, lived about a mile from his house.

(This witness stood aside to let Mrs. Albert Mailman give her evidence as she was sick and unable to remain longer from her child.)

Dena Mailman, sworn.—Am wife of Albert Mailman, know Angelina Mailman, have known her for twelve years, my husband goes away some times—stays away over night, have no reason to believe my husband is not living properly with me.

Mr. K.—Have you any reason to believe that your husband has had any illicit intercourse with Angelina Mailman?

Ans.—I don't think I ought to answer that question, but I will say that I have no reason to believe anything of the kind, save what I have heard by report; I know nothing of myself.

Mr. K.—When you came to Lunenburg the other day did you find Angelina and your husband in a bedroom.

Ans.—I have no right to tell you where I found my husband—and I won't.

Mr. K.—Did Angelina Mailman ever tell you she had improper relations with your husband, that she would do so, and break up their house before a year?

(His Lordship previously reading Angelina's denial of the words.)

Ans.—No. She never did make use of those words.

Cross-examined by Mr. Creighton—Never knew anything of improper conduct between my husband and Angelina, save by hearsay report.

John Fancy recalled to the stand—Have seen prisoner and wife driving out together quite often—quite lately. Mrs. Mailman told me this year that they lived more happily together last year than ever before, sometimes they lived happily and sometimes they quarrelled; framed a house for prisoner, occupied four days. Saw no quarrel between prisoner and wife at that time, heard some rough talk inside the house between Albert Mailman, Angelina and her mother, never heard Mrs. Mailman say that “there would be no trouble if Angelina was out of the house,” don't know whether this axe (axe shewn him) is the one owned by Peter Mailman; don't think prisoner and his wife lived as peaceable as people generally do.

Cross-examined by Mr. Owen—Prisoner is a quick-tempered man;

heard him use rough swearing; got angry with wife and abused her. Albert Mailman loafed around prisoner's house when I was there; didn't do much; staid there three nights.

John Munroe, sworn.—Knew prisoner and wife, saw them frequently drive to Bridgewater together; not since October, 1872, have seen prisoner and wife at their own house; they seemed to live kindly, as people ought to live; took dinner at house; prisoner and wife pleasant. Angelina lived with us as servant a short time; I should have doubt about believing her oath from what I know and have heard of her.

Cross-examined by Mr. Creighton.—Have known prisoner for 20 years; always good-natured as far as I know; never heard him use profane language. Angelina lived with me about a fortnight; wanted to get her back; had to pay a bill of about \$2 which she ran up on my account.

Jeremiah Taylor, sworn.—Saw prisoner and wife at Tobin's office; was twice at Mailman's house; first time he scolded his wife a little; have seen girl once or twice, but know nothing about her.

Cross-examined by Mr. Creighton.—The dispute at Mailman's was about a haying party.

Jacob Baker, sworn.—Know prisoner and wife; though they lived peaceable as man and wife should. Saw them last in July, and spoke to them; they asked my wife and me to come on Sunday and spend the day with them. Prisoner asked me last Spring to go to Greywood with him; did not see deceased drive Albert Mailman out of the house with a broomstick; have heard of the prisoner being at Greywood, but never knew of his being there.

Cross-examined by Mr. Creighton.—Prisoner has two brothers living at Greywood—don't know where they are; have seen prisoner and wife quarrelling—on one occasion saw his wife pack up her clothes preparatory to leaving house; coaxed her not to go—said it would make talk. She told me to speak to her husband, and if he said for her to stop, she would. I spoke to him, he said she could stop if she liked, but he would not ask her to stop. She and Angelina went away, don't know where they went. I went away. Prisoner pretty quick; never saw him in any uncommon passion; have heard him swear; have heard others swear worse. Don't think Mrs. Mailman stayed away for more than a fortnight; never saw prisoner beat his wife.

Michael Snyder, sworn.—Know prisoner; don't know much about him, never did me any harm; have been in his house, never saw any quarrelling; prisoner came to the Branch a day or two before his arrest; and his wife was gone; seemed to be searching for his wife.

Cross-examined by Mr. Creighton.—Prisoner said his wife had gone to Emeno's of her own account and that she might come back again if she liked, but he wouldn't fetch her; public not alarmed about the Branch at this time; Mrs. M. was never at the Branch; heard of the finding of the body afterwards; saw body under the tree well stowed in; very secure place.

(Here the two young children of the prisoner came into Court, and were seated.)

Theresa Mailman (11 years old) came on to the stand (Mr. Oreighton questioned her as to the nature of an oath—she knew her letters—could read a little—had been taught to say her prayers by mamma, her mother told her there was a God—prayed to God—if she told me a lie she would go to hell—her mamma had always told her to tell the truth—told her it was wicked to tell a lie.

The Judge talked kindly and told her she must tell the truth—that God knew everything she would say—and would be angry with her she told a lie.)

She was sworn—Know my father—had a mamma once—she's gone now—(much feeling in the Court, many strong men wept—and pocket handkerchiefs were freely used by scores. It was exceedingly touching.)

Saw my mother in the house for the last time—I then went around to Mr. Baker's fence to pick pears—Angelina and Sonnie were with me—(prisoner seemed entirely unmoved and as the child is giving her touching narrative, he is eating crackers)—I had a basket with me, brought home berries or pears—mamma told us to go and pick pears—this was after dinner; mamma and papa were in the house when we started to pick berries; mamma was sewing; don't know what papa did after that; never saw mamma after that; next saw papa in the house; when we first came back papa had not come back; the door was locked; was not in the field with my little brother when papa came home; when I came into the house, papa, Angelina, and Albert Mailman were in; mamma was not there; have not seen her since; mamma said she was going to Ben Baker's for a couple of days to reap and then she was going to Nathaniel Emeno's at the Branch; papa took Sonnie and I to Greywood; papa said we were going to Greywood when we went; Albert Mailman was in the house when we went away; papa had promised to take me to Greywood before this; never heard papa say anything about going to any other place save Greywood—papa said before we went that we would be away about a week. Solomon Baker came after pa, the night after we got to Greywood; we left Greywood on Monday morning, and got to Ben Baker's that night—been up to jail—saw papa—never saw papa alone in jail—always somebody in—a waggon sent for sonnie and me; we were frightened to come—for fear we would be put in jail—Mrs. Joe Baker told us we would be put in jail.

Papa and mamma went off driving sometimes; never saw papa beat mamma; papa kisses me—kisses Sonnie—sometimes he kissed mamma.

Cross-examined by Mr. Owen—Saw Counsel (Mr. Kaulback) last night, was alone with him and my brother, talking for some time—saw him again to-day. Didn't see Mr. K. this morning a few minutes; talked this matter over with Mr. K.

I had a little toilet basket that afternoon to put berries in. When

we came the home and found it locked, Angelina crawled in at the window. Albert Mailman broke open the door, and let Sonnie and me in; did not see papa when he first came. There was a large basket in the house—it was not there when we went in from picking berries. Saw the basket in room when Sonnie and I returned into house, after papa came home; saw calico skirt hanging up on a nail sometime after mamma was missing.

When papa, Sonnie, and I went away for Greywood, Angelina was sick; papa said "good bye" to her, and that he would bring her a present if she would keep house.

Witness detailed many other circumstances already established, but brought out nothing new of importance.

Court adjourned at 6.30, p. m., having sat incessantly for 8½ hours.

October 22.

The little boy, Peter Mailman (son of the prisoner), was brought on the stand, and some considerable time was occupied in endeavoring to ascertain if he understood the nature and solemnity of an oath. At length Mr. Kaulback very considerably allowed the boy to go without being sworn or examined, not wishing to incur any responsibility by putting the little fellow on oath.

Jacob Baker was recalled, and made an explanation of some little unimportant statement he made the day before.

John Baker, sworn—Knew of Mrs. Mailman leaving her home about two years ago. Prisoner asked me to advise her to come home. I did so; sent little Peter in to give his mother the message. Mrs. Mailman came out and walked home with me. She said to me last June that, "since Peter got a lawyer's letter Peter had used me well." Have seen prisoner and his wife driving together about a year ago." Never heard prisoner say anything about his wife.

Mary Bulliver called, (not here.)

Lucy Wile called, (not chosen.)

Lucy Frederick called, (not present.)

Magdeline Fancy called, (absent.)

Mrs. John Warn called, (no appearance.)

James Burke, Jailor, sworn—Have heard a number of names called by counsel; served subpoenas on all of them, had subpoena for Indian girl, but couldn't find her; used every effort at desire of prisoner and counsel. Have seen prisoner's boots when he came to the jail, on his feet; never examined them; no boots could come to jail without my seeing them. Know no difference between the boots the prisoner brought to jail and those he wears now; never saw anything peculiar about the boots; the heels have worn off flat. Prisoner urged me to get boots made here. Prisoner has been in jail for going on three months.

Cross-examined by Mr. Owen—Found the soles, the whole bottom of boots, perfectly smooth; no heels on at all; cannot say whether the soles were worn off or torn off. I never wore boots done in that

way. Soles something thinner on the one side than on the other. Can't say these are the same boots the prisoner wore when he came to jail.

Sheriff Kaulback, sworn—Testified about subpoenaing witnesses, but it had no bearing on the case.

Edward Kaulback—Evidence trivial on side matters.

Here evidence for defence closed.

HON. MR. KAULBACK'S SPEECH.

The testimony in the case on both sides having closed at half-past one o'clock, on the 22nd October.

Hon. Mr. Kaulback, Q. C., immediately commences closing defence.

May it please your Lordship.—The duty, Gentlemen of the Jury, which now devolves upon me, I need hardly tell you, is undertaken under many difficulties, and with unaffected misgivings and self-distrust. The task of defending a fellow-being on trial for a capital crime, of speaking the last words in favor of his life, before a tribunal that is about to declare in favor of innocence or guilt, life or death, is enough to overwhelm the clearest intellect and oppress the stoutest heart. Any errors or imperfections on my part, either of omission or commission, are fatal beyond the reach of atonement, and without the hope of retrieval. I am fully sensible of the awful responsibility resting upon me under the solemn issue you are trying—and feel conscious of my infirmities and weakness. They did not even require the ungenerous taunts of the prosecuting officer, so often and vindictively repeated,—that I was helping to “hang the prisoner,”—to make me fully aware of them. And therefore the more earnestly I entreat you—not to allow the prisoner to suffer through my faults and failings—but rather aid me in my feeble endeavors, act with me as his counsel, and give him the benefit of everything that should operate in his favor—and by so doing, the verdict you will render, and which I have a right to anticipate, at least better tend to quiet your own consciences through life and in death, and in sight of a scrutinizing God. Had I from the outset imagined that I was to have such an unusual and formidable array of Counsel against me, with such a striving for a conviction and a thirst for blood, I might well have shrunk from the responsibility of defending the prisoner alone and unaided, and left him to seek for stronger nerves and higher powers than I possess—but the exigencies now of the occasion demand its fulfilment at my hands and it shall be performed to the best of my powers. Strengthened by the conviction of an over-ruling providence above us—“which shapes our ends, rough hew them how we will.” And will not permit the truth to be overwhelmed or obscured through my imperfections or mistakes, and an immortal Being made in the image and after the likeness of God to be launched into eternity before his time. My duties to the prisoner will soon be ended—and if

I can only feel that they have been fully and faithfully performed, your verdict then, be it what it may, even though it be rash or unjustifiable, cannot be a reproach to me. I determined that as far as in me lies, the prisoner should have a fair and impartial trial, so far as the present unsatisfactory state of our criminal law will admit. That nothing should deter me from doing for him—all that he might fairly do for himself if he could. Notwithstanding the sentiments too often expressed, that the defendant ought to have been dealt with summarily,—and the reproaches on his Counsel for defending him. Did such people forget, or did they not consider, that the impartial and fair administration of the law help to maintain the law and the safety of society—and that no man under any circumstances is beyond the pale of justice or the fair adjudication of his fellow-citizens? I had faith that the better feelings and reasoning powers of the community would in time prevail—and that my present position would at least be respected. And I have reason, even now, to think, that at this present stage of the case, with the evidence of the trial before them—and made the subject of general discussion—that a doubt has at least arisen in the public mind, in which you have probably participated,—as to the guilt of the prisoner. May you not, I most solemnly ask you, at this present moment be assuming to yourselves the powers, and invading the prerogatives of Omniscience in assuming even deliberately and in cold blood, by any machinery of law, to set in judgment upon the life of your fellow being! Did your consciences justify you in determining whether the life of the prisoner shall or shall not be taken away? No such responsibility rests with me. Should your verdict be the cause of taking his life, which it must, —if his life is taken, in that dread hour when he struggles on the gallows and the breath of life departs his body, then, and in this life, and in death, you cannot shake off or escape the conscientiousness of your responsibility for that deed. And when your time shall come, and you yourselves stand before the Bar of that Being by whose will only we now live, and by whose decree only we ought to die—if you can reconcile your taking the life of the prisoner, which seems so repugnant to the doctrines of the Christian religion, then let that rest between you and your God. I contend boldly that the merciful Spirit of Christ who, amid his agonies on the Cross for us, prayed for his murderers, is wholly alien to the vindictive doctrine of the death penalty. I now ask you to consider for a moment whether the prisoner has had all the privileges which should be accorded him on this trial in vindication of his innocence. The Queen's Counsel, in opening this case to you, stated what he must well have known was not correct, "that the prisoner's mouth was not closed." I can hardly believe that the Counsel meant to deceive you on this point. And yet, how to reconcile such a statement coming from him, I am at a loss to imagine in any other way than that he started with the false assumption of the guilt of the prisoner, and was bound to have

him convicted at all hazard. This is indeed hard enough, and seemingly inconsistent with justice, that whilst in most cases in the most trivial cases a man may be a witness for himself, yet when the object of the enquiry involves his dearest right, he is to be manacled, led to the dock, and compelled there to be silent, whilst his life is being sworn away. This is not all. I ask you to consider some of the many other unfounded statements made by the Counsel, which he could not sustain, even did not venture to prove, such as "That the prisoner ran into the woods," "That he never made any search or enquiry for the deceased," "That he made a fire for a decoy," "That he told a party the very identical spot where she was found." You cannot but remember that all this was stated to you. I took the words down exactly as they were spoken, and yet, as I have already said, not one tittle of evidence has been brought to sustain either one of these unjustifiable assertions, although the Counsel had and has entire command of the public purse of the County to prove them if he was able, and by means of which every witness that could be scraped up, and that could or would in any way give evidence against the prisoner, has been or will be paid, whilst the unfortunate prisoner, without a cent at his command, or credit for a sixpence, is obliged to get counsel (not paid out of the public exchequer) as best he is able. He is shut up in prison, debarred himself of the privilege of looking after witnesses, without being able to see any one who would interest himself in that behalf, no money to procure subpoenas or the service of them on witnesses,—no public money to be procured for that object. His Counsel obliged to put witness after witness in the box without knowing what one of them could state on oath, and more than all, not one half of the witnesses who were subpoenaed who were called by the crier, and whom I had a right to believe could have given very material evidence in favor of the prisoner, have appeared in the court. And yet more the extreme indigence of this poor man and his helpless condition, prevented him from obtaining witnesses from the adjoining county. Those who undertook and promised him to see that they were here, miserably failed in its performance. All this has been shown, proved, or stated in evidence to you, and I now deliberately state to you my belief and conviction, that had we here the parties named, from Greywood, they could give you in evidence facts and circumstances that ought to convince you that the prisoner not only did not go there to escape from detection, but had made plans and arrangements to return on the Tuesday following with his children. The time I hope will arrive when such a state of things as this presented could not exist; but I ask you now, as it does exist, to say by your verdict, that this man's life shall not be taken away. That he should have the same privileges and advantages as if he were the richest man in the county—that he should have the same means of Counsel and procuring of evidence and attendance of witnesses as is possessed by the Crown, failing all this, as is now clear to you, could you, under

such circumstances, find the prisoner guilty? What a mockery to call this justice, and under such a state of things even to ask you to sit in judgment! It might do if we were living in the times and under the laws of Moses, when it was death for everything without privilege of Counsel, but certainly it ought not to do in our present day in this stage of the Christian era. The whole tenor and spirit of Christ's doctrine teaches a new and affectionate connection between the Great Father and his imperfect children, and bring light and immortality to light! while the Jews, until Solomon's time, had no knowledge of the immortality of the soul, and knew but imperfectly the great attributes of God as the Eternal Almighty allmerciful Father of men and angels. We find in holy history that Cain the first murderer not only was pardoned but was also protected from punishment by express decree of Jehovah. But I may be reminded of a passage in the Old Testament which says "who sheddeth man's blood, by man shall his blood be shed." This passage I think has often been misconstrued. It is obvious that it is not couched in the words of a command—as it does not say "Thou shalt slay the homicide or murderer"—but rather states the natural consequences of a murder in the vengeance of the kinsmen and friends of the victim. But search the New Testament and find me one passage if you can for any authority for man to take away by any process or for any cause the life of man. Is it not rather repugnant to and inconsistent with Christ's religion, his mission, death and resurrection for any of us to take part or lot in sending a soul to meet its God—before the time the Great Supreme has decreed for its departure. Implore Divine aid that with singleness of heart, in the spirit of mercy, humbly following the precepts and examples of your blessed Saviour—you may come to a right judgment. And by his Cross and by his Crown, by all his love and all his power may He be with you in that awful, that solemn hour, when you retire to your room—then with Divine light within you and around you. The prisoner can wait for your reappearance before him, with your decree, which he feels confident will set him free.

I must now revert to another painful part of this trial—with all the accumulation of public opinion centered upon the prisoner, he is placed in the criminal dock, witnesses are let loose against him—the principal ones disclosing, by their own evidence of their own characters, such a scene of immorality and profligacy as perhaps never has been exposed in any Court. Even the daughter of the accused comes before you manifesting from the outset the most deep and bitter hatred against her father—so wanton was her conduct, so openly and shamefully manifested, portraying such an abandonment of every human feeling, that you can come to no other conclusion, but that she is possessed of no moral principle sufficient to restrain her from swearing away the life of her father, if his life stood in the way of her keeping up the illicit intercourse which exists between her and that other abominable character, the chief witness against the prisoner, Albert

Mailman. Upon the evidence of these two God-forsaken characters this case mainly rests. Creatures vile and debased enough to be the perpetrators of any crime—even of that, which by their oaths, they seek to fasten upon the prisoner at the bar—on whom they have already brought such reproach and disgrace by their open and notorious sin. The witnesses introduced on the part of the Crown seemed influenced by prejudice and a feeling to determine everything adversely to the prisoner—with such feelings is it not reasonable, am I not right in saying, that many parts of their evidence has been exaggerated, if not simply imagined? They all seemed inclined to state things as facts—which were only their own inferences. In this way and by such a class of witnesses many an innocent person has lost his and her life. When a person can testify to a fact directly there can be little or no chance of error—but when, as in this case, the Crown seeks to convict of the crime of murder, by striving to prove in advance certain other facts and circumstances, which may be true or false, and those purely by inferences, each of which are open to the greatest error, to prove that the prisoner committed this crime; then I think it is high time for you to stop, pause and well consider, if by such a process you will take away life. You all know how easy it is to err, and your own experience will show that each of you have frequently drawn incorrect inferences from facts; but in this case you cannot even say you have the facts from which to draw inferences, because, as I have shown you, and will yet show you, that the witnesses, on whose testimony the Crown relied, and the principal facts are based, are, to say the least, not worthy of belief. But putting the case in the worst light, and even admitting, if necessary, for sake of argument, that the prisoner is guilty, that you have not the slightest doubt of his guilt, yet if the proof now before you in evidence does not come up to the legal standard and requisitions of the law, you are bound to acquit, the law presumes him innocent, he comes before you as such, you must confirm the law or take the responsibility of convicting him on evidence of the very worst character, such as never has and never can be made certain, but of which, on the contrary, history records many sad innocent lives being sacrificed. Don't, I implore you, risk adding another to that dreadful catalogue, and thereby risk your own peace of mind and the wrath of offended justice by usurping the powers of Divine Majesty and the attributes of Jehovah by sitting in judgment on the life of your fellow being, and attempt to unveil a mystery known only to God himself! Who did or did not commit this crime God only knows. Oh, with my last words I would implore you all to re-echo back from your jury box these words, "*God only knows*"—leave it to heaven. "Judgment is mine, I will repay,"—so saith the Lord. Then through the mists and obscurities which surrounded this case, mercy will have triumphed over wrath. No glowing horrors will darken your path by day or disturb your sleep by night, and

when you sink and fail, and all your years are fled, and your day of work is over, you will depart hence in peace and with a conscience clear, that not one drop of this man's blood will rise up in judgment against you.

Now, let me for a little while draw your attention to law of presumption, or circumstantial evidence, and dwell with me whilst I apply it to this case. Phil. Ev. 458, 8th Ed., says:—"Circumstantial evidence ought to be acted on with great caution, especially when an anxiety is naturally felt for the detection of a great crime. This anxiety often leads witnesses to mistake or exaggerate facts, and juries to draw rash inferences. There is also a kind of pride or vanity felt in drawing conclusions from a number of isolated facts, which is apt to deceive the judgment. Not unfrequently a presumption is formed from circumstances which would not exist as a ground of crimination, but for the accusation itself: such are the conduct, demeanor, and expressions of a suspected person when scrutinised by those who suspect him. And it may be observed that circumstantial evidence, which must in general be submitted to a court of justice through the means of witnesses is capable of being perverted in like manner as direct evidence, and that moreover it is subjected to this additional infirmity that it is composed of inferences, each of which may be fallacious."

(Here the Counsel explained at considerable length the above principles, their effect on the case before the jury, and the presumption of innocence to be drawn. He then cited several instances of presumption of innocence from Roscoe's criminal law, and then explained the great differences in the rules and nature of evidence and modes of proof in criminal cases from those cases in which life and liberty are not involved. He then cited McNally in his rules of evidence on pleas of the Crown, page 578: "Everything is a doubt in a civil case, where the jury weigh the evidence, and having struck a fair balance, decide according to the weight of evidence. This, however, is not the rule in criminal cases, for it is an established maxim, that the jury are not to weigh the evidence, but in case of doubt to acquit the prisoner.") I have endeavored, gentlemen, thus far to indoctrinate you with the law and the rules and mode by which you must apply it. I will not weary you with a reflection, but ask you particularly to remember that your duty is not to weigh the evidence, no matter how weighty it is on the part of the Crown, if you find one particle of it on the side of the prisoner you must acquit him, or you will violate the solemn obligation under which you are empannelled. The Counsel, in opening to you, stated that "circumstantial evidence was stronger and more reliable than direct evidence of the crime," and endeavored to sustain it by extracts read from no book, but from a piece of paper he held in his hand, and when I asked him for his authorities, he failed to give them. This, of itself, ought to have made you to suspect that the law he gave you was not to be trusted,

and that the foundation and principles on which he sought to gain a verdict from you were unreliable, and could not stand the test and scrutiny of opposing counsel. Mark my conduct in this respect. So certain was I of the law sustaining my case that I brought my books and authorities, and invited either of the opposite Counsel to gainsay any position I took and established by the best criminal jurists. Was it not, is it not, an insult to your common sense, to be told that this kind of evidence is better than direct evidence? I feel sure you have already determined, and do not require anything further from me to confirm your belief that it is a species of evidence the most wretched, falacious, and inconclusive. If this kind of evidence is so certain and reliable, how, in heaven's name, is it, that our books and the records of criminal law and history every where show, even in England, where every thing seems to be brought to the very pitch of perfection of which human nature with its endowment is capable, such melancholy masses of cases determined under this kind of evidence, in which it has not only failed to do justice, but innocence has fallen a sacrifice, Divine Justice violated and social murder committed by dragging the innocents to the scaffold and there launching them into eternity. Again, I would ask, how is it that if this kind of evidence is so reliable and better than direct evidence, that you cannot find a case in which a person has been unjustly hanged wholly on direct evidence, whilst so many thousands have been unjustly hanged wholly on circumstantial evidence? Again, I would ask you, how is it if this kind of evidence is so very reliable as the Counsel in his opening was anxious to impress you that it was, and the facts so very conclusive, that his conscience forced him to tell you "that his guilt must be the only rational conviction"? Strange as this appears coming from the Crown Officer, yet you can come to no other conclusion from what he said, than that although he pressed strongly for a conviction, yet he was anxious to relieve his own conscience from the responsibility of it, and that he had not, could not possibly have, perfect confidence in either the infalibility of the law or the evidence. Judges also have frequently been found cautioning juries in the same way, and asking them not to place too much reliance on this kind of evidence. May you not, then, well be cautious when you are thus cautioned? Your minds might be completely convinced of the prisoner's guilt, and yet he be not guilty. If every man is considered innocent until he is proved guilty, and such is the law, how can you declare him guilty without proof? In no case is circumstantial evidence proof. The law does not call it proof, but at least only presumption. How can you, then, without proof, find the prisoner guilty? Conviction won't do; you must have before you positive, uncontrovertible testimony. Well may you follow the Crown Counsel and force yourselves from the awful responsibility, under such circumstances, of presuming to find him guilty and taking his life.

I will now shew you some few of the many shocking cases where

innocent men and women's lives have been taken away by this wretched and most fallible of all human testimony. In each case the jury, of course, being convinced beyond a reasonable doubt that the prisoner was guilty, and each case being pregnant with the essential element, a motive for committing the crime, and hence much stronger than the case now before you. 2 Hale, P. C. 190, (n) gives this case: "An uncle who had the bringing up of his niece, to whom he was heir at law, corrected her for some offence, she was heard to say, 'Good uncle, do not kill me!' after which she could not be found. The uncle was committed on suspicion of having murdered her, and was admonished by the judge of the assize to find out the child by the next assizes. Being unable to discover his niece, he brought another child dressed like his niece and resembling her in person and in years, but upon examination the fraud was discovered, and upon the presumption of guilt which these circumstances afforded, he was found guilty and executed. The child afterwards re-appeared, when of age, to claim her land. On being beaten by her uncle, she had run away and had been received by strangers." In the same book, page 289: A horse was stolen from A. The same day B was found upon and arrested on presumption that he stole him, and was tried, condemned, and executed. Within two assizes afterwards, C, being apprehended for another robbery, and convicted, when about being executed, he confessed that he was the man who stole the horse, and being closely pursued, desired B, a stranger, to walk his horse for him whilst he turned aside upon a necessary occasion, and escaped. B was apprehended with the horse and died innocently. There is another case which I had under my hand, but cannot just turn to. It is substantially this: Where a man was seen running out of a house with a bloody weapon and thereupon a person was found dying in the room of the house from wounds such as could have been made by the weapon. The party fleeing not being able to account for the murder, he was convicted. Bash's criminal cases, 282: Cowper was tried for the murder of Miss Stout, and an appeal was entered. The evidence was, that he often stopped at her house; that there was an improper intimacy between them; that he was there with her on the evening previous to her body being found in the river, and that they both went out of the house together that night. Circumstances subsequently went to show that she drowned herself. The cases are so numerous of erroneous convictions and innocent life taken on circumstantial evidence, that I cannot waste my strength or occupy your time with particulars of them—must content myself in giving you some cases without comment. John Hawkins and Geo. Simpson executed in 1722 for robbing the mails. Thomas Harris innocently hanged for the murder of James Gray on the road from York to Newcastle. 1642. A girl for shooting her uncle at Leige, in 1764. John Flemings executed at Hull for a highway robbery in 1742. James Crow *alias* Thomas Giddey executed at York for burglary,

1727. John Miles executed at Exeter for murder of Wm. Ridloy. Jonathan Bradford executed at Oxford for murder of Christopher Hayes, 1736. Wm. Shaw executed at Edinburgh for the murder of his daughter in 1721. John Stumger convicted of the murder of his wife in 1765, at Kingston, in the County of Surrey. These are some few of the many known cases recorded where the innocent have been convicted and sentenced to death, and of the multitude of cases innumerable of human beings who, under some one machinery or another of human devising have unjustly been called on to render up their lives. Will you risk adding this man to the list and have your names forever recorded as the parties who deliberately and in cold blood convicted him and that on mere presumption, not proof? I will not be convinced that you will thus stain your hands in his blood. Oh, rather let the ocean of innocent blood already shed of all those who have departed hence by the same machinery by which this man's life is threatened—and will one day appear with you before the Bar of an offended God—plead with you for the prisoner. Oh! let the sight of his dear, helpless little children—whom you now see clinging with their arms around his neck—and whom he embraces so tenderly plead for him. They have lost a mother, how, is known only to God—would you deprive them now of a father's love and a father's protection? Nearly all of you are fathers. Oh, let all the natural feelings of affection, tenderness and care which you have for your children plead not only for their ~~hopeless~~ father but for his dear little ones, whom ^{helpless} should your verdict be adverse, would be rendered helpless orphans—cast upon the care of a cold, pitiless world, with no other identity than "*The children of Mailman the murderer.*" If you have one tender cord of love and affection—you must be touched by this living picture before you. You cannot lose sight of it. You cannot forget it—until your sight fails and your memory ceases. Then may the part you have taken in this trying and painful matter, fill your souls with comfort, and your end will be peace.

Had I not felt the danger of wearying you, I would have gone through every one of the list of cases, and shown you that each and every one was stronger than the one you now try, that in every case of homicide but one—not only was the body found—but yet more on each and every of the cases there were apparently strong, very strong reasons for the juries to infer a motive or probable cause which might have urged the prisoner to commit the alleged crime. In every one of those cases each of you might reasonably have fallen into the same error—sad and awful as the thought would have been to you afterwards. They must now be your monitors in this case—and if you then come to a rash and unmerciful verdict—the greater will be your guilt. 2. Starke's Ev. 521 2 ed., lays it down that in all cases of circumstantial evidence it is essential that there should be a probable motive. He says "For however strongly other circumstances may weigh against the prisoner, it is but reason-

able in a case of doubt to expect some motive, and that a strong one, should be assigned as his inducement to commit an act from which our nature is abhorrent and the consequences of which is usually so fatal to the criminal." Now where is the motive in this case? No motive has been assigned by the Counsel, the case for the crown has failed, and the essential element is wanting. I challenged the Counsel from the beginning. I repeated it in my opening address to you, and I now again ask them to point out any immediate preceding cause for this act. Judge Peter Mailman's conduct, gentlemen, with common sense, as you would judge of other men's conduct. I shall not fear leading you carefully through all the evidence, which we will do shortly, and to ask you to seek in that evidence for some proof of even a natural motive or ordinary incentive which operated on the mind of the prisoner, and impelled him to the commission of this act. Remember throughout this trial and when determining on your verdict, that the last law-book I quoted from said "that some motive *and that a strong one should be assigned.*" You may search through the annals of crime in vain to find anything so monstrously absurd as that a man in his senses in the blaze of the noon-day sun would in the sight and hearing of his children and neighbours, take his wife away deliberately with intent to murder her, and then afterwards for days drive about proclaiming the absence of the victim. Could he have persuaded her to ford and reford that river for any purpose or to go voluntarily into that swamp. No human comprehension could grasp any reasonable motive for the act. No human eye saw the act committed—and it is the most unnatural thing possible to imagine that any man however wicked would kill his wife under the circumstances, and in the way this is attempted to be fastened on the prisoner. The question has been often asked,—who did it—if he did not? Well, hard and cruel enough as the law now is—yet it does not impose such a burden on us—even if the prisoner knew—it could not be proved by his evidence. He has given me his suspicions; even those I have no right to relate to you—they would be no evidence—how monstrous then to ask us to account for the deceased. And if we do not do so and cannot do so, is that any reason why you should hang the man? Yes, monstrous as this is,—yet when the case has failed from its inherent weakness for lack of the proof or even the assignment of a motive, the counsel would seem inclined to throw the whole case back upon us and ask us to prove the prisoner innocent.

We were again asked to show why he ran away to Greywood. I am now glad that question was asked, for it gives but another proof that the Crown Counsel has failed in his case. It was the duty of Counsel first to prove that he fled there for fear of detection—or at least he fled there—before the accused could be asked to account for it. You have a right to require of the Crown the best proof that is possible to get. You are not to take inferior proof. Why I most

seriously ask were not the parties from Greywood brought here by the Queen's Counsel—they certainly would have been the best witnesses—the Crown failed to produce them—affords a presumptive yes, and that a legal presumption, that their testimony would not be favorable to his case—and therefore I ask you to dismiss at once from your minds the story of flight—and I urge this the more earnestly upon you after the efforts shown to you, that the accused made to get the parties here. The crown was in duty bound also to have subpoenaed the two children, and not have left it to the accused—why exhibit that depraved girl—and keep back the little children? The object was too apparent—and cannot be satisfactory to you. Every list of evidence favorable to the prisoner that could be excluded was kept from you—and what we did get was obtained with difficulty—after a great struggle with the opposing Counsel. Was it fair or just that anything should be kept that could have aided you in coming to a right judgment. I call on you therefore to view favorably to the prisoner,—this extraordinary struggle on the part of Crown. Take care that each of you are entirely divested of any such feeling—remembering that a man may be guilty of murder in the sight of God,—who has never pulled a trigger or raised his arm with malicious intent. Reflect seriously on this, one and all of you—neither of you can shift your burthen to your neighbor's shoulders—each of you will have one day to account for himself—each of you are individually responsible for your verdict here—not one of you dare yield up your own conscience when established in favor of acquittal!

I ask you also to find if you can, any evidence to convince you that the prisoner had malice in his heart against his wife, any feeling that could possibly prompt him to commit the crime alleged. You must certainly feel the weakness of this part of the case. Mind, human life is too precious to be periled by presumption on this point. No expressions of hatred or malice escape the prisoner's lips or show themselves in his countenance. If the Crown could have proved any immediate provocation—on the contrary, we not only find him speak in the best husbandlike terms of her before and after she was missing, but we find them continuously, particularly the last year, up to the time of her death, walking together, driving together, eating together, sleeping together, and living together, as man and wife should. Look at their last frugal repast—that mid-day meal, with their children around them—the natural, homely, and affectionate conversation, with the talk by the little one of berry picking, and the husband and wife planning the drive to Bridgewater the following day, as they had the day previous! Oh, yes! look at that natural, homely, loving picture, and say, dare you, from your hearts, say that he had then planned her destruction, or even that within two hours afterwards he had taken her life! You cannot say it. Your own conscience must drive you from such a conclusion, and the sequel, then, is that you must find him not guilty. I feel great joy in the assurance that there

is nothing in the testimony which convicts the defendant of having so black a heart as he must have possessed to have committed the crime. Had it been otherwise, I could not have defended the prisoner in the manner I have done.

And now, with the testimony in my hands, I hope to draw from you a full, entire, and unhesitating acquittal.

Here the Counsel read some extracts from Roscoe, on presumptions and proof of malice and presumptions generally—applying them to this case. And then entered upon a very elaborate review and commentary of the evidence. He commenced by saying—that in capital cases prisoner's Counsel frequently deem it their duty, as it was their privilege, not only to closely scan and scrutinise the evidence—but to comment on the character and conduct of witnesses, and lay bare their falsehoods with a freedom which would not be seemly in ordinary cases. He very fearlessly discharged that duty, avoiding everything that was not justified by the evidence. His chief aim was to convince their understandings, showing why the main witnesses ought not to be believed—the meagreness of the evidence and the failure of many important links in its chain.

(We cannot attempt to follow the Counsel in his searching review, and severe and scathing comments on the witnesses and evidence—nothing the most trivial escaped him—and where he found or imagined he found inconsistency or inaccuracies—he hung to them and dwelt upon them and repeated them and went over them again, determined if possible that they should not be lost sight of by the jury.—The first witness Daniel Carver was passed over with but little notice—the Counsel saying in substance as follows:—This witness testifies that he saw Mrs. Mailman put up the horses—not prisoner as sworn by Angelina. Witness did not see Mrs. Mailman leave the house with prisoner—although was as near as the daughter was, and could as readily see first. Saw them return from direction of chopping, about 3 o'clock—had nothing with him that I saw. If prisoner had been an active man he would have made the burning or clearing before. It was an extension of his clearing. I am a neighbour. Prisoner never did any one any harm that I know of. This the first witness contradicts and sets forever at rest the improper and unfounded statements made by Counsel in opening, viz:—“That the prisoner had made a fire in the woods simply as a decoy—and that he put up the hens—and at least, leaves more than a doubt as to prisoner and wife leaving home together and his returning with a basket or axe—(Mr. Creighton here interrupted—imputing a perversion of evidence—to which sharp retorts were given. Defendant's Counsel referring to the evidence to justify his statements.)

Next witness, Angelina Mailman—Counsel brought a terrible string of accusations, occupied over an hour with her. We can only give the pith of it. He asked jury to remember the boldness and levity with which she came to the witness box. The irreverent manner in

which she took the oath regardless of its sacred duties and responsibilities, the evident bias with which she testified saying "*hanging was too good for him.*" Her restless manner, her eyes wandering restlessly about,—her confusion, then her bold and quick answers, and again her reservations, contradictions, refusals to answer, and utter want of all decent deportment—and thus when they considered her evidence that no reliance could be placed on her testimony. That the life of a cat should not be taken on the evidence of such a wretch. She says on direct examination that she and children were by Michael Demone's fence when they saw father and mother leave with the axe and basket, and on cross-examination says they were then at Fancy Baker's fence—that they were over quarter mile away—and yet she could see prisoner lock up the house, and could identify the axe at that distance to be *his* axe—and she swears to the basket at that distance, and gives as a reason because they had only one basket in the house,—says Albert Mailman came direct from his house and not from direction her mother was found—and then on cross-examination swore she did not know where he came from, that she did not see him until he came into the house—when he opened the door. Direct examination says she at once thought he had done something to her—and on cross-examination says "I believed she was at Ben Baker's," until Baker came for her on Thursday. She said he frequently beat mother—and on cross-examination says 'twas more than a year ago since he beat her. On the cross-examination she swears positively that "he killed her mother with the axe he brought home"—when she did not know that he brought any axe home. She then swears she did not from the first believe her mother had gone to Baker's—whilst on her direct examination she swears that she did not expect anything until Baker came on Thursday and said she was not at his place. Refused answering whether she had any improper intercourse with Albert Mailman—but said she did not sleep with him. She denies that they planned one day at dinner, to go to Bridgewater together next day, that her mother told her that Baker had asked her to come and reap. Her deposition before Justice of Peace shown to her—again denies its truth—deposition read to her—says she never said so, that she never swore so—that the paper is false. After showing up other inconsistencies—Counsel again declared her a perjured wretch—who had deliberately come there to swear her father's life away—so that she might the better revel in her infamy—that she had also sworn false about the axe and the calico skirt. Counsel then painted her in the blackest and most revolting colors—beneath the human—beneath brutes of the lowest type. Devils would be pure compared with her. He had given her an opportunity to vindicate her character and reputation—she was silent and refused to answer the questions. The jury could not condemn prisoner on her testimony. She was not human—had no instincts of humanity. Supposing she even believed him guilty—had she no paternal feelings—no latent affection for him

who had cared for and cherished her in the days of her helpless infancy—oh no! she had nothing in her now—no sense of responsibility to God or man. She had a human form; beside that, everything, her highest instincts, seemed not equal to the level of domesticated brutes.)

Mr. Kaulback proceeds in the review:

Joseph Baker's evidence is of little importance—further than finding and identifying the body—which facts are not in dispute. Otherwise I should be disposed to comment on his conduct with greater freedom than is my present purpose. Remember he says that the tracks were well defined, they made a clear impression—that he and Uhlman looked particularly at them—saw nothing particular about them; no marks of nails. Saw a tree cut on Eastern side and crossed the river—saw no tracks until they came near the swamp. Remember he does not say that they traced the tracks on the western side of the stream as far as the tracks went. It was very important for the Crown to show that, if nothing done so—you having a right to assume that the tracks did not go there—or at all events that the witness never looked for them—had they done so, they might have found the tracks continuing down the river to the Branch—the Crown having failed to supply the means for doing so—you cannot possibly connect the tracks on Western side of the stream with those discovered near the body—the witness does not say that they even looked alike. Witness says he saw one track a few yards from the body—but does not show in what direction—he even did not follow it. This must be unsatisfactory to you. Witness is a Justice of Peace—a near neighbor to the prisoner—and although you saw he was desirous of keeping nothing back that would make against the prisoner—yet he did not—because he could not, say anything against the general good character of the prisoner—no complaint made.

Benjamin Baker testified to nothing that is in dispute. His evidence is in favor of prisoner's case, in so far that he proves that Mrs. Mailman was to go reap for him, and that when he went for her on Thursday, her daughter Angelina said, "She is back to your place."

George Uhlman's evidence is exactly the same as Joseph Baker's: never traced the track from the body of deceased; but witness says further it led in direction of prisoner's property. On cross-examination witness said he did not follow the track, did not know in what direction it led, and did not know the direction of prisoner's property from where the body was found. He says he believed they were the tracks of prisoner and wife, because she was missing; but people frequently went after wild pears, and the tracks on Western side might have been other persons. It is evident Josiah Faney told him something afterwards about the prisoner's boots and witness thought the marks were like description, although Joseph Baker swears that he and this witness examined the marks carefully, and there was nothing particular—no nails—about them, only one large and another small track.

The evidence of Doctor Calder is passed over with but slight comment. He says, "the whole body was covered over when I came; none of the clothes were exposed." This seems inconsistent with Baker and Uhlman's account of the finding; how could they have seen or recognized the body.

Robinson Cox (Medical Student) says, "Any blunt instrument might have made a similar fracture."

Dr. Gideon Barnaby was not present, never saw deceased; says from Cox's description of fracture he thought instant death ensued.

Josiah Fancy.—This witness's manner of testifying is open to censure. He cannot be believed. Remember his appearance on the stand, and the devilish and brazen manner he assumed on cross-examination. His mind and heart was full of malignant purpose, and portrayed a character well adapted to swear away the life of any one. His conduct and actions justified the pointed questions put to him respecting his connection with that vile girl, and the answers he gave are not truthful. When he swore that he never had attempted, and was never charged with attempting an indecent assault, and never paid any hush money, did he not know that there were living witnesses who could prove the facts? Of all the characters presented here, not one of them but would have quailed to state what he did. But apart from his known character and his appearance before you, I will take his evidence and from that will convict him. Is it not too absurd to believe that prisoner, if he knew, would have told that man, with whom, for good reasons, he was at variance, where his wife would likely be found? Oh no, he was the very last man to tell, witness well knows why, and on a different enquiry from this, would have brought to light what for the present must remain uncovered. Then his description of prisoner's boots—why could not other witnesses be brought to prove them? Why did he not show them to somebody? why let this rest on his own oath if true? You have heard the evidence of the Sheriff, his Deputy, and Jailor, and I shall dismiss that part of the story, only reminding you that if such were the boots of prisoner, the only boots he owned, then we have this clearly proved, that the tracks on West side of river were not prisoner's. Remember the evidence of Joseph Baker, that the tracks were clearly defined and marked, nothing particular about them, no nail marks. Witness stated in direct examination that he went right to the house of George Mailman, and found prisoner there. Again witness says that prisoner was not there; that they (meaning him and constable) asked for prisoner and waited twenty minutes for him, and that constable had a private conversation with George Mailman; and yet on cross-examination he swore that George Mailman did not know who or what they wanted until next morning. Then remember his denial of what he said in my office in presence of Jacob Baker and others; and after that give to his testimony the weight it deserves. Remember he was forced to admit that prisoner did not act as if

guilty of the charge; that he was ready to return; anxious that every search should be made; answered every question freely; and drove behind them all day and after night with his own children, all the way from Greywood. A guilty man would not thus have acted.

Edward Crouse.—This witness's evidence is favorable to prisoner; it shows that prisoner intended going to Greywood just about the time he went; that he had made known that intention to witness and wife about two weeks previous, and asked them to go with him. Witness says, "I personally knew prisoner; he was always a good neighbour to me, and others as far as I know." Witness relates a conversation in which prisoner complained of his wife straying away from home, and that some time she would be missing and nobody would know what became of her. Witness says, "I heard she was in the habit of straying away from home, and at the time he spoke of it, did not think anything strange of what he said. I only thought of it after the body was found." This conversation seemed natural, nothing was thought of it, and certainly nothing unfavorable to prisoner can be made out of it, but on the contrary must tell greatly in favor of his innocence; and being a Crown witness, stops them from even saying that he fled from crime, as it is proof positive of plans and intentions matured and arranged, weeks before, of going to his brother.

Jacob Rafuse brought to prove alibi of Albert Mailman, judge ruled out defendant's Counsel's questions regarding what *deceased* had said favorable to prisoner's habits, and their domestic relations, on objection by Q. C.

Ben. Fancy saw prisoner come from direction of burning about three o'clock, had something in his hand, and something on his shoulder, do not know what they were, proves it is usual for persons to go and look after their burnings, says he and the prisoner got along very well, was a good neighbor with every body, saw prisoner and wife frequently drive together. They went together in waggon on the Saturday previous to Bridgewater.

Dr. Croucher's evidence passed over without any comment, beyond that it showed that death might have been caused by a blow from some instrument other than an axe.

Albert Mailman.—Counsel went at his evidence and character with a vigour and style which could only be justified under conviction that the witness was the vilest of beings, and guilty of wilful falsehoods. He asked the jury to show their honest indignation at the production by Crown of such a monster of iniquity, on a case where human life was at stake, a man condemned out of his own mouth of the most abominable crimes, said the fountains of justice were polluted, and the morals of the people shocked and injured by production of such infamous characters. Counsel then settled down to review his evidence and point out the errors and inconsistencies and perversions and concealments of truth.

The Jury here expressed their inability to follow the case any further without rest and refreshment. The Judge expressed similar feelings, the Counsel therefore stopped, and it being half-past eight, the Court adjourned to the following day.

THURSDAY, OCTOBER 23.

Court opened at ten. Prisoner's Counsel resumes his comments on Albert Mailman's evidence. Angelina Mailman is present enjoying the vituperations of Counsel. Witness swore that he did not see or speak to Angelina since her examination. Proved that he was since then alone in a bed-room with her. Does not deny that he slept with her; says he slept oftener at home. Counsel shows up glaring inconsistencies between statements of Angelina and witness as to conversation when prisoner left for Greywood. Witness swears that prisoner was not away from home that week, and yet it is proved by Angelina and others that he was away every day but one. Says there were no Indians at prisoner's on the Monday, afterwards admits that he saw an Indian there. Shows that witness swore to matters that he did not and could not know, and afterwards admitted that he only heard so. Counsel again urged on the jury to throw out this testimony; that witness felt not even a moral responsibility to tell the truth; and laboured to convince jury that he and Angelina had a motive to get prisoner out of the way, so that they might the better carry on their illicit intercourse.

David Frossel.—Counsel commented on this witness severely. Said that he overstepped all bounds of decency, and manufactured testimony, hunted it up, intimidated some witnesses, and instructed others what to do. He even had to admit that he directed the Queen's Counsel to ask Mr. Owen to help him, and that he (witness) expected to pay Mr. Owen; and then witness comes into court and endeavors by his own oath to hang the prisoner. The court ought at once, on such admissions, to have committed the witness. You must not, you cannot, believe him on his fabricated testimony. The like of it was never heard on a trial of this importance. He says he saw an axe in prisoner's house, but does not say that he did not take it there, and being pressed would not swear that it was prisoner's axe. Why did not the Crown, or this witness who was doing the dirty work, ask Angelina or Albert Mailman to identify the axe? they had best of all reasons for not doing so. If they wanted truthful testimony why not ask the little girl? They all knew prisoner's axe, and witness well knew from what he heard that it was not prisoner's axe; and if the pear trees were cut with that axe, which witness swears to, the owner of the axe ought to be asked to account for it and the pear trees—why was not Albert Mailman asked about it? This axe is not prisoner's, and if the trees cut have corresponding marks, it proves that prisoner did not cut them; and this important link wanting obliges you to acquit the prisoner.

Joseph Baker.—This witness comes with a new story, different from what he swore to at Bridgewater—why did he not tell all there? He was bound under his oath there to tell the whole truth; he cannot plead ignorance of duty: he is a magistrate; why did he not prove about this axe when under oath? but why keep this back? *it amounts to nothing*, but places him in an equivocal position; and when taken together with testimony of Jailor as to the children, his conduct in keeping children locked up when under subpoena by prisoner, and preventing Counsel from seeing them, and his prevarications here, evidently show at least a bias, such as deprives his evidence of any weight; and at best he proved nothing in his first or this examination except the finding of the body; one circumstance was supposed from another equally supposititious, and from both fictions united, another was produced. I think I before stated that the law never admits an inference from an inference; nor a circumstance to be inferred or presumed; both must be clearly and substantially proved.

Dena Mailman (wife of Albert Mailman).—Counsel asked jury to remember the looks of that poor, neglected woman, evidently fast sinking into the grave with grief; brought here by the accused to prove the wickedness and depravity of her husband—his illicit intercourse with Angelina; to remember the fear and dread depicted in her countenance and manifested by her conduct, lest by telling the truth she might yet suffer more from a man who is proved equal to any emergency. If she did not swear the truth, such as she came to prove, forgive her, and may God forgive her, she has had *Hell* enough already. You could evidently see she was not a free agent, that she wished to speak the truth, but was restrained through fear of that man—I cannot call him husband—who can add little more to her cup of misery. Possibly the thought of the deceased, and what might happen to her, shook her nerves, and her honesty of purpose when she left home to give evidence. You saw she trembled and feared to answer, when asked where she found her husband and Angelina when she came in town; and when asked if they were not alone together in bed or in a bedroom, she would not answer, and I did not press the question from motives of pity, which I am sure you appreciated.

John Fancy swears—That he knew prisoner's axe and worked with it. Cannot recognize axe produced here; "don't believe I ever handled it." I was at prisoner's four days last summer framing barn. Did not see prisoner and wife quarrel during that time, but heard very rough talk and noise in house between prisoner's wife and Angelina and Albert Mailman; prisoner was at the time with me framing, he was not in the house. Albert Mailman slept there three nights out of the four; he was not hired but spent his time by loafing about the house and sometimes giving a lift outside. Mrs. Mailman said they lived happily—not quite sure that she said when Angelina was away; I have frequently seen them drive together; saw them drive together just before this happened. Counsel commented favor-

ably on the evidence and character of witness, and told jury if they sought to render an honest verdict, and satisfy their consciences, they must acquit.

John Munro's evidence Counsel commented on as beyond any suspicion of partiality; an intelligent and respectable witness, who knew well the prisoner and his wife; dilated on the happy home harmony and peace as evidenced by witness at prisoner's when Angelina was away. "I dined with them; his wife was not well—she said 'Peter did all the cooking.'" "Peter did this and that;" "Peter does all the cooking;" all was harmony and peace. Counsel painted this loving home picture: dwelt long and earnestly on it; and then asked the jury to look at prisoner and say was he that Peter, and was that his home; if so, could he now be the cold-blooded murderer? Witness further testifies—That from what I have heard and seen of Angelina Mailman, I would doubt her oath; she was our servant-girl: she ran bills in shop in my name and then got her wages from me. Never saw prisoner out of temper; never heard him take his Maker's name in vain.

Jeremiah Taylor.—I know the prisoner and wife—the first time I saw them they were disputing about a haying party—the next time I saw them they were happy—they bought and I brought them—all I knew about Angelina her mother told me. Counsel commented strongly and reproachfully at not having been allowed to prove what the deceased might have said about Angelina and Albert Mailman.

Jacob Baker.—Is one of prisoner's nearest neighbours—and father of wife of Albert Mailman. I and prisoner used to help each other in our work—he was a good neighbour to me—never heard anybody complain of him not being a good man—they seemed happy together and to act as man and wife should. I saw them driving together a few weeks before her death. They both asked me and my wife to take dinner with them the next Sunday. Last winter he asked me to go to Greywood with him: I knew he went to Greywood before that. Counsel dwelt long and feelingly on this evidence—impressing on jury that he could not possibly have murdered his wife—and he spoke warmly about not being allowed to get an answer from witness to the following question. "If witness did not see Albert Mailman, his son-in-law, in bed with Angelina. She never complained to me about her husband."

Michael Snyder.—Counsel spoke in highest praise of the character of this witness. That we could not doubt his word and much less his oath. Witness was often at the house of prisoner—never seen or heard of him wronging any one—never knew them to quarrel. Saw him on the Friday at Branch enquiring after his wife—told me she was gone—other men were present at the time—spoke as if he was looking for her—appeared as if he came to search for her. Counsel dwelt some time on this evidence—said that it falsified the assertion of Crown that prisoner never made search or enquiry.

Theresa Mailman daughter of prisoner—Counsel comments on the honest and truthful manner of girl's testimony, and censures Crown officer for not having produced her, as he was bound in justice and as the law required him to do—charged Crown with withholding testimony—did not want the whole truth. She says she and her brother went with Angelina to pick berries because her mother told her. Angelina swore that her father told them. Angelina swore that they saw their father and mother drive in the hens, lock-up house, and go away with axe and basket. Witness swears that she never saw her mother after they *three* went to pick berries—"first time I saw father afterwards was in the house—did not see him go or return. Angelina swore that they saw him put up the hens. When we left, mother said she was going to Baker's to reap and also to Nat. Emeno's. Did not hear any questions asked about my mother. Before we went to Greywood father told Angelina he was going and would take me and my brother to uncle's. Albert Mailman was present and heard him say so—(both Angelina and Albert Mailman swore that prisoner said he was going to Waterloo)—father was to Greywood before—and promised them to take me and Peter next time. When we were getting ready he did not speak of going anywhere—but to Greywood, and told Angelina he would be home again within a week (Angelina swore that he never said when he would be back.) Have not been alone with father in jail—he never asked me any questions. When father sent the waggon for us, I was afraid to come. Mrs. Joe Baker told us if we went we would be put in jail—father and mother often went driving together—never saw father beat mother—sometimes saw him kiss mother; and on cross-examination says "Father told Angelina that if she staid home and kept house, he would bring her a present from Greywood. Do not remember of father and mother quarreling, or of father speaking cross to mother. We took cloth, &c.; with us to have dresses and clothes made." Counsel here commented on this evidence, and the honest simplicity and truthfulness manifested in every part of it. Compared it with testimony of Angelina and Albert Mailman, and said if they believed this witness they must acquit the prisoner. Touched upon the loving and tender affection as shown to have existed between Mailman and his wife. That there may possibly have been some quarrels; that those nearest and dearest were liable to irritations and little fallings out; they amounted to nothing; all of us are liable to them; all of us have had our quarrels with our better-halves; if we were to be tried on them, each of us would likely be found guilty.

Counsel asked the jury to look favorably upon the fact that the little boy was produced to give evidence, that there was no desire to keep back the truth, or fear of its consequences.

John Baker testified that he once went at request of prisoner to bring his wife home; that she made no complaint or gave reason for going away; that prisoner did not scold her when she came back.

Witness searched for deceased, went up the river from Rocky Island as far as Frossel clear, and down the river; there were pear trees cut both ways, apparently cut at same time. Counsel dwelt some time in comment on this evidence; stated that it was impossible for prisoner and wife, after one o'clock, to go to and cross the river, walk the distance and out down and pick the berries up and down the river, cross the river below, pick three and a half quarts of berries, commit the crime and conceal it, go to the burning and be home in less than two hours. The facts showed that whoever cut the trees up the river, cut them down the river. That they must believe prisoner could not have done it; that he had not the time to do it; that all that part of the story was incredible; that he never went across the river; and consequently the main features of Crown case being destroyed, there was nothing left by which the Crown could ask for conviction.

Counsel reminded the jury that Mary Boliver, Lucy Wile, Lucy Frederick and Magdalene Fancy were called, but did not appear; had been subpoenaed as proved by Jailor Burke, and some of them had appeared in Court, but for some cause, motive, or influence, they failed to give testimony; possibly kept out of the way by the very persons who sought by their oaths to convict the prisoner. Counsel commented severely on these acts of injustice, and implored the jury to stand between the prisoner and the scaffold; to watch every act of injustice done him; and not to convict in any case on less than the whole of the evidence; not allow the prisoner to be deprived of his legal rights, small as they are here; and if evidence is kept back improperly, don't allow themselves by any chance thereby to commit that awful, that horrible sin of prejudging and condemning their brother man to death.

James Burke, Jailor, the Sheriff and his Deputy, all must have convinced you that prisoner now has but the same pair of boots in which he was arrested and committed, and that from examinations of them that they could not have been, when arrested, in the state as described by Josiah Fancy. Counsel referred to the evidence given by the Sheriff, the landlord of accused—he knew him well as tenant for about twenty years; never heard any complaints from his family or neighbors; considered him of good character, with exception of not keeping his promises to pay rent or interest.

Counsel here made a short review of the evidence, endeavoring to show how each and every of Crown witnesses failed in establishing a case on which the jury could for a moment think of convicting the accused. Every act of the prisoner before the absence of his wife was as natural as possible. Nothing could be shown by which they could infer that the accused could in his senses have ever premeditated such an abominable sin as to take away the life of his wife. No possible motive, no settled, deliberate, long-harbored intent can possibly be inferred from any act, even if you go back twenty years, the whole term of their married lives. In order to convict him Crown had en-

deavored to show cruelty and bad conduct, but in this they had failed; everybody is generally well known in rural districts by their neighbors, and not one of them from the Justice of Peace downward, could say aught against him: except his own daughter and her paramour; and that they only should give such testimony under the circumstances, makes but the rest of their evidence unreliable, to say the least, and when coupled with their conduct generally, and the many deliberate falsehoods you must be convinced they told, you will be constrained to throw out their evidence; that done, you can certainly not find evidence to justify a verdict of guilty. That prisoner loved his wife cannot be doubted; that he showed it by every possible way up to the time she left home is apparent to you. It was endeavored to show you that he was inconstant to his wife: that signally failed; they did not even subpoena a witness to anything by which you might infer it. It was a malicious charge made by his daughter, which she even shrank from confirming by her oath, whilst the prisoner had subpoenaed the very woman against whom insinuations were cast. Prisoner's conduct after his wife's absence was quite natural; no falsehoods proved uttered by him, which are the common subterfuge of guilt; no irreconcilable statements, no after circumstances manifesting the motive of the crime; nothing in his look, gesture or manner which discloses a disturbed state of mind, a sense of guilt; no words, before her absence, as of anger, vengeance, hatred, or malice; nothing afterwards but frank, open conduct, no desire to conceal anything; no timidity, no fears, no cowardice, such as guilt would naturally force on him. Such as you see him now he has been since he was incarcerated. Nothing but a firm sense of innocence could have sustained him throughout his confinement, and in this sad hour of his trial; manifesting even now no fear such as guilt would have forced from him. His tears may flow as they often have flowed when thinking of his bereavement. That his character is unimpeachable and has stood the test here, cannot now be doubted. That he is of gentle disposition you cannot doubt, as you now see with his attention fixed on us! See how naturally and tenderly he caresses his dear little children, so long deprived of his care and protection! Is this put on for effect, to enlist your sympathy? Oh no, every part of it is natural and earnest, such as they have felt and to which they have been accustomed. Don't rend asunder such love and such tenderness! Such acts speak more forcibly of prisoner's gentle disposition than any words of mine. On the evidence of thousands such characters as Albert and Angelina Mailman, I say it, and say it confidently, that you cannot determine that prisoner did, of malice aforethought, commit the act. He declares his innocence, and all the presumption of fact and law, I have clearly shown, are in his favor. Even admitting he did it, it must have been, could have been, nothing else than a fit of insanity; reason must have been dethroned, and powers of mind gone, and he not responsible for consequences. Therefore, under any circumstances, you must find him not guilty.

I have shown to you that the character of the evidence is unreliable and bad; have shown you case after case where by such evidence the innocent have suffered death. They teach you a solemn lesson; they warn you to be cautious; remind you of the errors of others situated as you now are; on whom like responsibilities had devolved. If you shut your eyes on all this, and set your consciences now against right impressions, let the sin rest on your own heads! I have withheld nothing from you, have labored and pleaded earnestly and long for the life of a brother man, under a deep sense of right and duty; I now see and feel many failings on my part, too late to remedy; but my weakness and shortcomings only add so much the more to your responsibilities—see to it, that you fail not! If your verdict to-day be not in accord with justice, mercy, and your consciences, to-morrow will be too late to amend it. Then what awful feelings will possess you when you see this man struggling on the gallows! But that will not terminate your remorse; your mind will be tortured with it through life; you will not free yourself of it in death, but carry it with you before the Judge Eternal, who “loveth mercy, and forgives iniquity, transgressions and sin.” May your judgment to-day be in accordance with the judgment you all hope for, when you will stand, with prisoner, before the bar of God. Then you will live happy, and die in peace. I have urged you by the laws of man and by the evidence that you come to no verdict that will send this man to the scaffold. *Take no such course!* He has a soul to save, a probation to perform to his Maker: do not interfere with the overruling providence of God. Not a sparrow falls to the ground without His consent. If the death of this woman is yet to remain a secret, as it now is, in God’s good time the guilt will be brought to light, and the guilty punished. Pause ere it be too late! Don’t be too wise in your own conceit. Don’t attempt to fathom this mystery or assume the powers of Omniscience. Take Christ as your example and guide, and stop whilst there is time! Read His Sermon on the Mount, and take care and take warning lest in your attempt to root up the tares you root up the wheat! Yes, take this book you have kissed, by which you must be governed here, if you seek for happiness hereafter—read and learn of Christ your duty now; follow Him from His cradle to His cross; feel your solemn responsibility, and by your consciences and your oaths try the prisoner; and let your verdict be such as will vindicate the majesty of eternal truth, and uphold the sacred cause of justice! Look each of you at the accused: his all this side the grave is now in your keeping. The stake is too great for him to put confidence in man, or any body of men! No words of mine can express his feelings. Remember he is our brother by God’s creation, and is a spiritual and immortal being. Look at his dear little children, let them now plead with you! Sunder not, I implore you, the father from these dear helpless ones, hanging so affectionately on him, who, by their acts, implore his protection and care! Let his necessities

and tribulation plead with you, and may you be relieved from all prejudice and hardness of heart! Trust not on your own wisdom: seek Divine light, and pray that your verdict may be but the voice of God speaking through you. Remember the angel of death may now be among us—that either of us may be within a step of eternity! Then, when time has run its course, your work done here, and in death you sink and fall, and your dim eyes roll vainly round on the things of time, and your hours have fled, may your merciful and right verdict to-day support you in your last hours, cheer you through the desert road, the valley of death, to that throne and judgment seat, before which you and prisoner—yes, all of us, must appear and answer for our actions here! There will be no mystery or doubt there! Oh, in mercy, I implore you, leave all doubts to God and that judgment day.

The result I now commit to your hands. To you, in all confidence, I confide the interests of my client, imploring you, by the helpless condition of the prisoner, by the love you bear to those who are dear to you, by the hopes you plant beyond the grave—to mark your judgment with mercy!”

Mr. Kaulback closed a little before 2 P.M., having occupied about ten hours in his address. This was one of the most elaborate Jury addresses on record. The Counsel exhausted every means in his power on behalf of the prisoner, and shook from his skirts any responsibility that adhered to him as Counsel for the defence. We cheerfully render Mr. Kaulback the credit due to his strenuous efforts, gratuitously made on behalf of his unfortunate client. Though guilty, abominably, heinously guilty, it was only in accordance with the genius of our laws that his case should be fully presented.

W. H. OWEN, ESQ.'S. CLOSING SPEECH.

(During the preparation of this pamphlet I made considerable effort to obtain from Mr. Owen a full report of his closing speech; but he was so absorbed in professional duties that he found it impossible to devote so much time as its preparation seemed to demand. Although I listened with very great pleasure to its delivery, yet my notes were so scanty that I have found it impossible to give anything like a full report of what he said. It may be mentioned, however, that the task imposed upon the learned Counsel for the crown was far less difficult than that assumed by the prisoner's Counsel. Mr. Owen had a clear case, and only required to present the evidence in detail to make his one complete. However, the Counsel occupied about two hours and a half in the delivery of his address, and exhibited much ability, and displayed much eloquence. I am exceedingly sorry I am unable to give his fine forensic effort in full, as it is, the reader must be content with a brief synopsis, time forbidding the lengthy report which might otherwise have been obtained.)

Mr. Owen began by intimating that he felt the duty imposed upon

him, as painful as any he had ever been called upon to perform. He was by no means desirous of taking the prisoner's life—far be it from his thought to imbue his hands in the blood of an innocent victim! But the rigid and impartial administration of our laws, demanded that guilt and crime should have no palliation—that in our peaceful and happy land the murderer should be brought to justice and made to feel the rigor of those laws which his enormous crime had wantonly outraged. If the prisoner at the bar was innocent, he hoped he would be set free; if the jury could reconcile his innocence with the overwhelming cloud of evidence that had been produced against him, then by all means let their verdict be for acquittal! But, though it pained him to say so, he was convinced that the evidence given in this case pointed irresistibly to the prisoner as the murderer of his wife—he chain of circumstances seemed complete. Not a link was wanting, each successive day of the trial had brought its fresh mass of damning testimony, and if the jury believed, as he conceived they must believe that the prisoner, and he alone, had done the horrible deed, then indeed, should they act fearlessly, as their duty to the community, and our laws demanded, and allow no idle sentiment to deter them from the strict administration of justice. The counsel for the prisoner had endeavoured to terrify them with horrid pictures of a felon's death. But did he forget the no less horrid, and still more revolting picture of his victim's doom? Let them think for one moment of that scene in the woods! The poor wife with clasped hands, appealing in tones of the deepest pity, for life. "Spare! Oh spare!" she cries to the man who had vowed to love and protect her,—the man whose lot she had agreed to follow,—the man whom she called her husband! But the relentless monster is unmoved by her shrieking entreaties, and her piteous prayers, but raises the hand to strike the fatal blow! Let them not be blind to this terrible scene, and let them see to it that justice be not perverted, or the guilty roam at large, and our laws are insulted, and its decrees violated with impunity!

The learned counsel then reviewed briefly and concisely the entire evidence, shewing a clear chain of circumstances, pointing with unerring finger, and irresistible force to the prisoner. He made reference to the more pertinent objections of the prisoner's counsel, and showed how easily they could be reconciled, and how immaterial were all the inaccuracies, and how trivial and unimportant were the contradictory and conflicting points. This was not a difficult task. The counsel had unquestionably a strong case, and he succeeded in presenting with great force and convincing clearness.

He concluded something as follows: "If the learned Counsel for the prisoner felt his duty a painful and responsible one, I assure you, gentlemen, I have felt mine none less so. I have not sought to take this man's life. I have never 'thirsted for his blood.' I have been accused of acting in this capacity for the sake of money; gentlemen, let me say I have had no such motive. The learned Queen's Coun-

sel, feeling that this case was likely to be a long and trying one, asked me to assist him, and in consideration of his age I consented to do so, but I neither want nor shall I take a penny for my efforts. I have been guided only by the desire to bring the guilty to justice, and vindicate the majesty of our laws. If after the evidence you have heard, you can believe the prisoner innocent of the charge against him, then by all means acquit him. Far be it from my mind that the innocent should be sacrificed! But, gentlemen, if you are convinced that he and none other committed this horrible deed, by your verdict assert the power of our laws, and, in any case, do your duty! Act honestly and fearlessly, and everybody then will be satisfied with your verdict, be it for the acquittal or the condemnation of this man!"

THE JUDGE'S CHARGE.

His Lordship commenced his charge at 3.45. I have often seen Judge DesBarres on the bench in various places in Nova Scotia, and had the pleasure of hearing him deliver charges to a jury; but never before did I know him to so rise with the occasion, and speak so clearly, forcibly and feelingly. He exhibited all the knowledge of the lawyer—the gravity and impartiality of the judge, and the sympathies and emotions of the man. When he commenced his address, the Court House contained more people than it ever held before; and such eagerness and intensity of interest, I never saw depicted on any mass of human faces. The prisoner and his two little children in the box beside him. The arms of both the little ones were entwined around his neck, and his strong arms surrounded their little forms. Nothing could be imagined more overpowering, touching and impressive. Often the children imprint an affectionate kiss upon their father's face, which he feelingly returns. He looks distressed and anguished—stricken indeed!

His Lordship, after impressively referring to the horrible and revolting features of the case, and the unspeakable solemnity of the responsibility resting upon all parties concerned in this trial, and most especially on the jury, proceeded to narrate in the most minute detail all the circumstances surrounding the murder, omitting nothing, putting everything in the strongest light, but fairly and impartially before the jury, without any opinion or judgment of his own. He put the case clearly before them in this light: "There is no doubt a murder has been committed—that Mary Ann Mailman's life was wilfully taken by some hand. "Was the prisoner at the bar the person who perpetrated the deed—and was he the only person who could possibly have perpetrated it? If they believed he was, then they must find him 'Guilty?'" "If they had any reasonable doubt of this, they must find a verdict of 'Acquittal.'" "With the consequences of their verdict they had nothing whatever to do." His Lordship then read his minutes of the evidence in full, occupying just three hours, conclud-

ing at 6.45. I cannot compliment the learned Judge too highly on the stern impartiality and strict, unbending justice displayed throughout, with a merciful desire to strain a point and seize upon anything favorable to the prisoner,—justice blended with mercy.

THE VERDICT.

At about 7 p. m., the jury retired. At a little after eight, the word went out that they were ready with their verdict, I transcribe the description of this painfully interesting trial, from one of my letters to the "Recorder." The Judge immediately entered the Court House and took his seat on the bench. Quick as thought the house was filled,—the word had spread and the crowd rushed frantically to the place in mad eagerness to hear the words which were to fix the prisoner's doom. Pell-mell in they jammed, and the intense excitement could be felt in the very air.

The prisoner, who had been notified that the jury were ready to announce their verdict, walked deliberately down from the jail, bringing his two little children with him. He walked calmly into the box, and lifted the two little ones upon the railing, supporting them carefully with his arms. The scene was a thrilling one. Only one feeble lamp threw its light over the dense crowd.—There was a sort of ominous, startling gloom which penetrated to every human heart.

I took my place immediately behind the prisoner's box, wishing to watch the effect upon him as carefully as I possibly could, as I had been so puzzled and amazed by his conduct hitherto. I had been led to fancy that a vulgar hope that he would "get clear somehow," had been his strength hitherto, and that once take away this and he would give way to the horrors of his position. The 12 men who held his life in their hands slowly filed into their box, looking pale and solemn. The foreman rose to his feet. There was an awful stillness as of death. Every heart beat fast—every one trembled in anticipation of the awful word. At last the foreman's voice was heard, clear and distinct:—"We find the prisoner at the bar, Guilty!"

The silence and hush in an instant gave away to a sort of murmur which ran through the crowd. I understood it to be of approbation and satisfaction at the verdict. Quick as thought every eye was fixed upon the unfortunate criminal. To the astonishment of every one who saw him, he never moved a muscle nor betrayed the faintest sign of emotion. He looked steadily forward and remained as cool as if he had received a paltry fine. Marvellous to relate, from the moment the verdict was given till he left the Court (about ten minutes) he never trembled a single particle. He did not seem half as much affected as myself. I only noticed one thing—that as often as he looked about and caught the eye of any person he knew, he did not speak as usual; he looked at me two or three times, but seemed to be quite unconscious of my identity.

At length he shook his head and said "Well I am innocent and I don't care!" and his tone would lead one to believe him.

The Sheriff gave orders that the crowd should leave the court-house before the prisoner was taken out. A good many did leave, but the greater part were insensibly chained to the spot. Hitherto Mailman had only been a ruffianly sort of a character in their eyes, whom they desired to see convicted, and feared he would get clear. Now he had undergone a change in their conceptions of him. He stood there a condemned felon—the rope already about his neck—without the faintest hope of freedom or commutation. In this capacity he became a hero—something beyond the natural and the common place. Everybody was anxious to see what he would do, how he would look and act. But Peter Mailman never flinched. He saw the thousand eyes that were turned curiously towards him; he observed the mass surging towards his box; he fully realized that hanging was inevitable and might be his fate before a week; and yet he never betrayed any emotion; never showed the slightest sign of fear or horror!

He stood there, as I said, about ten minutes, waiting for the crowd to disperse. The two little children still had their arms about his neck, and he was able to mildly return their caresses. Innocent pets! they little understood the meaning of the terrible word that consigned their father to a felon's death! But they seemed to realize that the air was pregnant with something grave and wild,—for they clung more closely than ever to their father, and seemed more filled with pity and regard than ever before.

At length the crowd had been sufficiently thinned and the jailor was preparing to leave with the prisoner. The latter looked up, gave a shake of his head, and with a sardonic smile, observed: "Well, I hope Dave Frossel and Joe Baker are satisfied now"—and glancing up to the platform and discovering one of the magistrates who committed him, he added, with a nod at the party,—“and John Tobin too.”

He then carelessly threw his hat on his head, took each child by the hand and deliberately walked out, and walked up to the County Jail, leading the children as before. The eager crowd followed—intensely excited, but Peter little minded these.

It is customary to handcuff even a thief when convicted. This murderer was allowed to walk a quarter of a mile in the evening with his children, when flight could not have made his case more hopeless. All he had to do was to break away from his children and run, and being athletic and swift of foot, he could soon have been out of reach of pursuers, and with an axe in his hand he might have defied the County for some time. But he walked quietly along—quietly to the jail—quietly into his cell—and quietly went to rest!

THE SENTENCE.

On the morning of the 25th Oct., at 11 a. m., on motion of Hon.

J. Creighton, Queen's Counsel, the prisoner, Peter Mailman, was brought into Court to receive sentence. When he was asked by the Clerk of the Crown, the following question :

Peter Mailman, you have been indicted for the unlawful murder of Mary Ann Mailman. Whereupon, you pleaded not guilty. And on that indictment you have been found guilty by a Jury of your Country. What have you now to say why sentence should not be passed upon you? Prisoner replies, "I am not Guilty." Judge DesBarres then passed sentence as follows :

"You, Peter Mailman, the prisoner at the Bar, have been charged with the murder of your wife Mary Ann Mailman. You have been found guilty of that charge by a Jury of your Country, after a long, patient, though a painful investigation. You were defended by a gentleman of the Bar who used all the ability he was possessed of, and a great deal of ingenuity to gain for you an acquittal. There was not the possibility of a doubt, or you would have received the benefit of it. Under the evidence I do not see how the Jury could have arrived at any other conclusion. I will not go into this matter very deeply; for if I did my feelings would overpower me. I can hold out no hope to you that the sentence I am now about to pass upon you will not be carried out. I have no doubt that some kind minister of the gospel will assist you in preparing to meet your God.

The Sentence of the Court is that you shall be taken from hence to the place from whence you came, from thence on Tuesday the 30th day of December next, to the place of Execution, and there to be Hanged by the neck until you are Dead, and may God Almighty have mercy on your soul."

INCIDENTS OF THE TRIAL.

It was noticed particularly by all who attended the trial, that the prisoner invariably conducted himself with the most cool and dauntless indifference throughout. His bearing was that of a bold, fearless and hardened man. When the most damaging evidence was being given against him, he seemed perfectly unmoved; when the most thrilling scenes were being enacted, such as the detailing of the circumstances of finding the body, he was the least affected man in the court. His appetite seemed unappeasable, and he ate everything that was put into his hands.

But even Peter Mailman, hardened as he was, and destitute of much of that finer feeling which is supposed to reign in human hearts, could not always be insensible of his position. He had his moments of terrible reflection. In the long days and nights he spent in his solitary cell, what thoughts must have come, the past haunting him, the future torturing him with most sickening apprehensions. And, as day after day, the trial proceeded, what a terrible volcano of dread thoughts must have been raging in his breast! How restlessly and anxiously

must he have tossed all night in his lonely bed, re-enacting in his fevered dreams, the exciting drama of the day! What a night-mare the scenes of each day in the trial must have seemed as he passed them in review while restless and sleepless in the dark and solemn hour of midnight! I spoke to him one night, and asked him how he felt. He said "I am in some grief—I feel pretty bad—but my courage is not gone yet; I have some hopes yet! My conscience is as clear as an angel's in heaven!" Surely, surely, this poor wretch, ignorant, soulless and indifferent as he is, deserves our warmest pity! What situation can be more desperate and terrible!

In one of my letters to the "Recorder" I find the following reference to a conversation I had with him the morning before the verdict.

"I had some conversation with the prisoner again to-day. After doing all I could to encourage him, the conversation turned on the possibility of an adverse verdict."

I said "It would be a terrible thing if they should find you guilty; do not you feel awful apprehensions?"

He replied, "No! I have a clear conscience, and that makes me easy. If I were to be hung at 12 o'clock to-day I would not be alarmed. If I knew for certain I was to be hung to-morrow at 12 o'clock I would sleep as well to night as ever."

In a moment after he resumed—
 "There isn't much in life anyway. We have nothing but cares and troubles. I wouldn't take my own life, but if others take it from me I cannot help it. But, mark what I say to you, I may never speak to you again. They may hang me, but if they do, those who do it will never prosper afterwards, and I don't believe they'll get to heaven at last. You may remember this afterwards when I am dead. I tell you I am innocent."

I believe a verdict of "Guilty" will break him down, and that, if guilty, he will make a confession before execution. If he doesn't I shall believe he is innocent; for, strong as he seems, and dauntless as he is, I don't think he has sufficient strength to pass through the ordeal without breaking down.

THE PRISONER'S CHILDREN IN HIS CELL.

One of the most touching incidents in the trial was the visit of the two little children to their father's cell. They had been brought into town a day or two before, but they had been frightened to go up to the jail on account of their childish fancies of the horrors of such a place.

When, on the evening in question, the Sheriff went to conduct them to the jail, at the request of the prisoner, they cried bitterly, and seemed terrified beyond measure at the idea. Learning these facts from the Sheriff, I went to the hotel where they were stopping, im-

pelled by the dismal interest which these scenes had gained over me. After petting and caressing them a little, and promising them they should return at their pleasure, I succeeded in getting them good-natured, and they cheerfully consented to go, and that they might have double confidence, I persuaded Mrs. Jacob Baker to accompany us.

The scene at meeting was indiscribably touching. The prisoner seemed overjoyed at thus again seeing his children after their long parting; and the children showed no less tenderness and affection. They had been there only a few minutes when they expressed their wish to remain, and so Mrs. Baker returned home.

I entered the cell a few minutes after the first meeting was over. It was a melting scene that I beheld. Both of the children had their arms entwined about their father's neck, and mutual kisses and embraces were being indulged in. The children seemed wild with pleasure at seeing their father once more, and were unable to restrain demonstrations of their joy.

And the prisoner! He was dumb with emotion. His face silently but eloquently expressed the deep feeling which the presence and embraces of his children stirred within his heart.

Pressing them close to his heart, he exclaimed:

"Ah, I haven't seen ye, my dears, for a long time, but I am your father yet, and I'll take care of ye as long as they will let me do it."

He told me he had only slept half an hour the previous night for thinking of them, so much did he long to see them.

"You won't be locked up," he said: "it's only your poor father that they lock up; but you may run about and play with the jailor's children, and I'll give you a few cents to-morrow to buy some sugar-plums with."

The children expressed a desire to stay with him, and it was granted them. They wished to stay in the cell with him, but he told them they could not do this, but they might sleep near him, and they could speak to each other in the night.

These children thought nothing of their father's crime—nothing of his murder of their poor mother—nothing of his horrible position as murderer, close to the foot of the scaffold. They only thought of the prisoner as their father!

I was glad to see his paternal affection rising above his awful condition—above the dark and damning charges laid so terribly near his door—above the woe and anguish of the afflicted family—above the disgrace and suffering which surrounded, and would hang over them during life. It touched me beyond measure, and I felt it to be an earnest of some good in the hearts of human beings.

I left the scene deeply impressed. It will not soon fade from my recollection, but will linger long after the memories of many more pleasing incidents shall have vanished from my mind.

THE PRISONER'S CONFESSION.

The trial over, the verdict found, and the sentence pronounced, the execution of the law only remained. All who were interested in the matter were satisfied of the guilt of the prisoner. But there was much speculation as to whether he would confess previous to his death. If he had gone to the scaffold stoutly maintaining his innocence there would not have been wanting large numbers who would have had strong doubts of his guilt. A confession of guilt would be satisfactory to everybody. Penitence is unattainable apart from acknowledgment of wrong, and repentance usually follows close upon confession. The clergymen in and about Lunenburg who had become deeply interested in his case, and solicitous for his spiritual awakening and true repentance, approached him frequently on the subject; but without success till the first of December when he sent for Rev. Mr. Owen, Episcopal Rector, and on different occasions, and in presence of different persons made the three following statements; which are about *verbatim*. In reading, it will be understood whenever a question is put to the Prisoner, it is by Mr. Owen:

LUNENBURG JAIL, WEDNESDAY,

December 3, 1873, 9 p.m.

I, Peter Mailman, aged 47 years, now in confinement in this goal, do freely, and of my own accord, without constraint either by fear or favor, confess in the presence of the subscribers hereunto, that I am guilty of the crime laid to my charge, and for which I am at present under confinement in this jail.

Peter

As witness my X mark.

Mailman.

(Signed)

H. L. OWEN, Rector of St. John's Church,

(Signed)

W. J. DAUPHINEE, J. P.

(Signed)

JAMES BURKE, Jailer.

THE JAIL, LUNENBURG,

FRIDAY, Dec. 5th, 1873, 3 p.m.

On coming this afternoon unto Peter Mailman's room in this jail, I commenced speaking to him on the matter of his late wife's boots. He said to me: "Mr. Owen, on my bed last night I gave the thought that it was no use to make confession any longer; but that I would be responsible for the whole murder, the boots, and everything else, and that when Mr. Owen came next time to see me, I would put the whole sin off my hands by telling him all, so that after that he could use prayers and tell me about my soul, instead of losing more time in talking about matters, about which we have already talked so often.

Mailman says:—On the day of the murder, about 1 o'clock, my

wife asked me if I would not go and pick berries too, for to go to the Bridge next day. The children had already gone. I went with her, and something near a mile from the house we picked the berries. When we got there the fruit trees were all cut down. We only could find one bush. That I cut. Who had no words on the way to the berries. We went like two children could go by the hand. Coming back we sat down by a tree, right alongside of a log road. We talked there about a quarter of an hour, both as one. I put my hand on her lap, and drew up to her. She took hold of my hand and threw it away, and sprung for to go away. I took hold of my axe and hit after her, and didn't expect to hit her so hard as I did. It killed her at once. I sat down and lifted her body sitting, and thought may be she had only been stunned. But there was no more breath there, though I stopped with her 20 or 30 minutes, and thought perhaps it might. God knows how bad I felt. If I could have blown breath into her, I would. We returned by the log road, which was further round than the way we went, because she wished it, as it was better to go through the log road than through the bushes, and we could get nearer the waggon road, from the meadow up to the house. I lifted the body and laid it under the root. I took the boots off and the hat, and carried them with me home. They stand in the burnt land in the potatoe piece, where they are now. The axe I left in the woods. The place where I laid the body was three or four steps from the scene of the murder. That's candid. I came home and set fire to the burning about $\frac{1}{2}$ mile from the house, in another direction. I felt the terror upon me, and now my plan was not to be found out. I slept home that night. Next day (Tuesday) I went to Jas. Baker's and John Boliver's. Wednesday I went to the Bridge—Thursday I was home—Friday I went to the Branch, and I took the little boy with me in the waggon. Saturday I was home baking bread. Saturday night I went to Greywood, nearly 50 miles from my house, and about 7 from Annapolis. Got up on Sunday at 3 o'clock; at 7 o'clock the constables were there. Monday I was fetched down from there, and Tuesday I was brought in to prison.

I remember, after my eyes are shut, any body that's blamed for anything, the only time it'll come out, is when they are put in prison and tried. Then it will come out. For I did make an awful sight of crooks and turns myself to get clear, and yet was guilty. Out of a small speck that a body is blamed for comes to be a big sore at the end. Then it will only be found out. Now, I take that from myself, and wish all others would do the same.

I am truly sorry that I have broken the laws of the good God, and of my country—I am. If I could live my life over again, I would rather lose my life than take another life; and I would give all the riches in this world if I could bring my poor wife to life again. What of my life remains, I wish to spend in repentance to God, and in love to man. I don't blame the judge nor the jury; and where there was

any false evidence given against me, I wish to forgive it, and hope God will forgive it too. I thank all those who have shown me kindness since I have been in this jail. The ministers who have visited me, and the jailor who has been a kind friend to me, and the friends who sent me meals and other kind things, may my good Saviour remember them in the day of trouble. I also thank Mr. Kaulback, my lawyer and my kind friend, for all he done, and as much as he done, and for all the trouble he went to to save my life. He done all ever one man could do for another. He did, and I say it. He lost time, and I have no doubt he lost sleep, for me, and done all he could to get my brothers from Greywood for witnesses. I thank him heartily for all this and all else he done for me. Put down his wife, Mrs. Kaulback's, name, too. She sent me papers with pictures to pass my time, and books that she made a purpose for me—also oranges and apples and cakes, and I thank her very much for her kind messages to me about God and Jesus and my soul. I thank her, and God will reward her in heaven. I thank Mr. Owen, the lawyer, and Mrs. Owen for all they sent me. Their kindness did my poor heart good, as well as my body. I am in prison and they send unto me. Rev. Mr. Smith, Mr. Creighton, Mr. James Dowling, Mr. Heisler and Mr. James Bourke's family, likewise. For all the good the Rev. Mr. Owen gave and done me, from my very soul and blessed Saviour I thank him heartily.

I will now spend the rest of my time in looking up to heaven to the Holy God, whose laws I have broken, and to the Lamb of God, who taketh away the sin of the world.

And now, if my prison doors were opened, and I could go out free, I would rather stay where I am, and prepare my soul for another world, than go out any where, for if I was to go out, ten years longer I might not die as well as I hope to now.

(Signed) ^{his} Peter X Mailman.
mark

In the presenece of
(Signed) HENRY L. OWEN.
(Signed) JAMES M. BURKE, Jailor.

THE JAIL, THURSDAY,
Dec. 9th, 1873, 10 m.

Mailman says:—I want to tell you the true reason why I committed this murder. Through Albert Mailman and Josiah Fancy keeping with my woman and breaking up my family, I committed this murder. If they had kept away from my woman, this would not have happened. Albert Mailman could do more with my woman than I myself, and that was very hard. For the last two years my woman always had money, which I knew she got from Mailman—from Josiah Fancy I do not know. They are both married men with

families. The neighbors could see Fancy go to my house, when no one was home but my woman. He tackled my daughter once in the woods, and once in my barn, which I know of myself. I do not say that I am free from sin. I do not say that I have done nothing to provoke my wife, or that I have not sometimes made her jealous of me. I am sorry when I have done so; also, when I have made her angry, and when I got into a passion myself. If I had not got into a passion this would not have happened. The squaw never travelled with me but once. I was going home alone from Bridgewater, and when I was about 8 miles from home I came up with her, and she asked me to take her in, which I did, and she went with me upon our road, where we parted. She went to her camp about one mile from the road where we parted, and I went home. That was the only time she ever was with me alone. She had half a pint of liquor in a flask for her father, an old and sickly man. I had none with me.

We did not taste the liquor. I never had any wicked acquaintance with her. My neighbors can't deny that statement. It is the truth. I said to him: "while I was writing your confession on Friday, Mr. Agnew's body was found at Spectacle Island with his money, watch and rings, all safe, so that he was not murdered. Our county is therefore putting away two murders from it—one by the finding of the body, the other by your confession." Well, now, that is right; I am glad to hear it. I hope my neighbours will never again hear of such things in this county. I read this over to him. Now, said he, that is right. My wife's head struck a piece of wood when she fell. She had a wart as big as that ink bottle (3 cent bottle) on the small of her back, right by the back bone ever since I knew her. I said when I threw the axe away, you shall never cut another blow for me. That thought I gave the axe, any how.

(Signed)

his
Peter X Mailman.
mark

In the presence of

(Signed)

HENRY L. OWEN, Rector.

(Signed)

JAMES M. BURKE, Jailor.

I never thought God could be so merciful to such a sinner as I am; but I thank God, He has opened my eyes and took me out of darkness, and now I can see miles and miles ahead of me, when I could not see a rod before me, and that is up to my blessed Lord and Saviour. And if I owned this world, and all that is in it, I'd sooner have my shoes and go to my Lord and Saviour. I say to every sinner: it is no odds how big a sinner he is. Repent and look to the Lamb of God and he'll be saved. I hope Albert Mailman and Josiah Fancy and my dear daughter will take warning from my death, and see the end of sin and turn from sin and lead better lives, and all who are living in wickedness, whether I know them or not, I hope they

will hear the voice that speaks from this cell, which is, "The wages of sin is death." God's eye sees us, and God's hand follows us every where. Put that down. And he never forgets—speaks truth. Do as you would be done by—mind that. And now, through the blood of Jesus Christ, I am reconciled to die. Oh, how glad I am he has opened my eyes to see my sins; and opened my mouth to confess my sins and put away the blood from my sinful hand. Yes, that's it. I would rather die with Christ's blood upon me, than live with my poor wife's blood upon me. I deserve to be miserable; but I am happy. I don't deserve it. Many a time I stand for hours with my hands upon the bars of my prison window looking up to heaven, and asking God for blessing and pardon. My window looks to where the sun rises, and where Christ rose, and with my thoughts I follow him up where he went above the stars, and I think I see him there with his crucified hands. That's about the amount of it. And when I lie down and when I rise up, I get the same scene. His blessed spirit and feelings ain't out of my mind one minute. I said to him, "Peter, they are out of your mind when you are sleeping?" He raised his hands, and said, when I sleep, I sleep solid. But when I took hold of him with my heart, I did it so solid I seem to see Jesus when I am solid asleep as well as if I am awake. My thoughts are all the time on him, and I've made my peace with him, through the blood of the Lamb.

(Signed)

Peter X Maliman.

mark

In the presence of

(Signed)

HENRY L. OWEN, Rector.

(Signed)

JAMES M. BURKE, Jailor.

SOLEMN SCENE IN MAILMAN'S CELL.

LUNENBURG, THURSDAY, 18th.

This afternoon, at 4, p.m., Peter Mailman received in his cell, at the hands of Rev. Mr. Owen, and at his express desire, the Lord's Supper. The High Sheriff, Mr. J. H. Kaulback, and the jailor, Mr. James Burke, partook with them in the sacred rite. The three children, who had been brought that day from the country to see their father, were present at the solemn scene. At the close of the service, Mr. Owen informed the little company that almost the first sermon ever preached to the Negroes, was in the prison at Philippi. The preacher was the prisoner. The audience the converts, on that occasion, were the jailor and his family. The text was, "Believe in the Lord Jesus Christ, and thou shalt be saved, and thy house." The application of the subject to his children, his house as well as to himself, was especially comforting to the poor prisoner, whose demeanor was most calm and solemn during the scene, and grateful afterwards.

THE EXECUTION.

And now comes the last sad tragedy. On Tuesday, the 30th of December, 1873, at 8.30 a. m., Peter Mailman paid the extreme penalty of the law for his terrible crime. The evening previous he was attended by several from whom he received words of comfort and consolation. He professed great penitence and sorrow for his crime, and avowed his hope and trust in Jesus Christ for pardon and redemption.

Before the hour of execution arrived a vast throng numbering over 2000 persons congregated to witness the sad scene. The prisoner accompanied by several clergymen and the Sheriff and his Counsel walked from the jail to the scaffold. He was calm and unmoved. He surveyed the dreadful instrument of Death to see that all was right. When asked if he had anything further to say, he replied that Mr. Owen would speak for him. He manifested no emotion while his hands were being pinioned, and died bravely, if we may so put it. After ten minutes suspension, life was pronounced extinct, and his body was taken down and buried in the corner of the jail yard. A solemn scene this, and it is to be hoped that its impressive lesson will not be forgotten by the thousands that witnessed it!

These are his last words as read by the Rev. Mr. Owen from the scaffold :

" My good friends all ! I was very sorry when the murder was committed ; and when I found there was no life to be had any more, I made up my mind, and set my head, that if the Law would give me clear, I would be clear in this world, but not in the next. And if the Law did not give me clear, I set my head to lay down my life for the life I took. I was sorry, and am sorry yet.

I only ask you all to be kind to my poor children, who will soon be fatherless and motherless. I hope they will live in the fear of God, and keep clear of sin, and anger.

My good friends, I ask you all to pray for me. I die looking to the blood of the Lamb, and praying, Lord remember me when Thou comest in Thy Kingdom. Into Thy hands I recommend my spirit, for Thou hast redeemed me, O Lord, thou God of truth.

Lord, have mercy upon us, &c.

Our Father, &c.

The Grace of our Lord, &c.

We conclude this record with the following lines, composed by an aged Barrister, at present residing in Lunenburg, appropos the sad event. This closes our chronicle of the unfortunate fate of Peter Mailman.

LINES

ON AN UNFORTUNATE MAN, WHO WAS EXECUTED AT LUNENBURG, N. S.,
30th DECEMBER, 1873.

Unhappy man! where has thy spirit fled?
 After a life of labor—death of dread,
 A crime that madness only can explain,
 A helpless woman by her husband slain.
 The tortures of his heart to God were known,
 While she struggled to regain her throne.
 The fear of death still held him as a slave,
 The fear of death and of a felon's grave.
 Earnest and well his Counsel did contend
 Against strong proof his client to defend.
 Boldly and ably his appeal was made,
 But all in vain the fatal verdict said.
 When what the law could say or do was done,
 Plainly his earthly race completely run,
 God, willing that his misery should cease,
 To this sad prisoner sent a man of peace,
 Who loved the sinner but the crime abhorred,
 And brought sweet sounds of hope—the gospel word.
 Of that dear victim, on the cross resigned,
 Whose blood for every sin can pardon find.
 He spoke of paradise,—its boundless joys,
 Where pleasure endless is and never cloy.
 Persistent, day by day, and night by night,
 Till that despairing heart began to melt
 And penitent the sufferer humbly knelt,
 In that poor being's breast new thoughts arise,
 And shew a path that leads beyond the skies,
 God's mercy now in brightness round him flows,
 And to his troubled soul comes sweet repose.
 No longer Death the king of terrors seems,
 But humble, calm and patient he awaits
 With faith and hope, his guides to heaven's gates.
 Blest be the judge who gave him ample time,
 To think of God, and to repent his crime.
 How thankful those should be, whose happy home
 Invites to rest, while some are driven to roam.
 Not tempted in unhallowed paths to tread,
 But in content to lay the weary head.
 Ah! who can tell what his own fate might prove,
 If banished from the realms of peace and love.
 When o'er the mind the stormy passions rule,
 The wisest man's no better than a fool.

EINWOHNER.

Lunenburg, Jan'y 3, 1874.

He held the heavenly vision to his right

