CITY INTELLIGENCE.

THE GIRLS' NORMAL SCHOOL.—This evening the Academy of Music—in the assemblage which is to gather there—will present attractions to the most steady and the most giddy—to the full-headed scholar and the empty-headed fop. The attraction is to be the Commencement of the Girls' Normal School—or rather the girls themselves who are to participate in said commencement. The steady and the learned will go to quaff pleasure from the advance of education—the giddy and brainless will go to quaff the same from the sight of feminity. But let all attend, for their attendance can produce no harm. The time will undoubtedly be one of pleasure and profit—the scene one of beauty and grace. Some of the pretty damsels we have so frequently encountered on the street, carrying books in arms, will drop those books to-night. Music, too, will lend its attractions to the entertainment to-night—vocal from the throats of the girls, and instrumental from the throats of the brass whirligigs. Don't fail to attend.

A SPLENDID OPENING.—Mr. Gustave Paul, the enterprising and efficient agent of the Knickerbocker Life Insurance Company, has just removed to a new and spacious office at No. 112 S. Fourth street, below Chesnut, and celebrated the event on Thursday last by giving an entertainment to some four or five hundred of his friends, which is conceded on all sides to have been one of the most sumptuous and elegant affairs of the kind ever gotten up in Philadelphia. Everything that the most exacting epicure could desire was spread in the greatest profusion on superbly arranged tables, and the guests present did ample justice to the magnificent feast prepared for them through the liberality of Mr. Paul. Hon. Erastus Lyman, President of the Knickerbocker, and other distinguished gentlemen, graced the occasion with their presence, and wit, mirth, and good humor reigned supreme from the beginning to the close of the admirable affair.

SUSPICIOUS CHARACTERS.—Robert Polin and Joseph Doyle, at an early hour this morning, were found prowling around the vicinity of Twenty-sixth street and Washington avenue. On being arrested they said they were from New York, and in search of employment on the steam railroad. Being suspected of being burglars, they were taken before Alderman Bonsall and bound over in $1000 bail.

KNOCKED INTO A CREEK.—Peter Wright last evening, while walking across the Frankford creek bridge, was struck by a locomotive on the Philadelphia and Trenton Railroad, and knocked into the creek. He managed to get out of the creek, and reached his home on Cumberland street. He did not sustain any serious injuries.

WATCH PRESENTATION.—Last evening ex-Chief Engineer Terrence McClusker was presented with a very fine watch and chain by his friends. W. D. Kendrick, of the Columbia Engine, made the presentation speech, and Joseph A. Bonham, Esq., received the gift on behalf of the recipient. The ceremonies took place at George Glenn's restaurant.

DECATUR LODGE, No. 33, I. O. O. F., held their annual sociable on Friday evening at the Musical Fund Hall. The attendance was large, comprising intelligence, amiability, and beauty. All seemed to enjoy the dance, the song, and the usual *et ceteras* of the occasion until a late hour, when they parted with the pleasant desire of meeting again and often.

VIOLATING A CITY ORDINANCE. — Edward Chambers this morning was fined by Alderman Hurley for violating a city ordinance, in leaving his horse stand in Third street, above Chesnut street, without being tied. The animal went on the pavement, and kicked a gentleman who happened to be passing at the time.

SERMON TO YOUNG MEN.—A sermon to young men will be preached at the request of the Young Men's Christian Association, by the Rev. J. Wheaton Smith, D. D., at the Spruce Street Baptist Church, Spruce street above Fifth, to-morrow (Sabbath) evening, at 7½ o'clock. Seats will be reserved for young men.

THE RIFLE CLUB BALL.—The annual ball of the Philadelphia Rifle Club will be given on next Monday evening at National Guards' Hall. The gentlemen having charge of this affair are exerting themselves to make it the most brilliant ball of the season. Those who participate may expect to have a good time.

STILL MISSING.—Jeremiah Quigley, the elderly gentleman who left his home, No. 1323 S. Seventh street, on the 7th of December last, is still missing. His friends and family are still making every exertion to find out his whereabouts.

DISORDERLY HOUSE CASE.—Alderman Kerr this morning held James Hagan for a further hearing on the charge of keeping a disorderly house at No. 324 Noble street. The arrest was made by Sergeant Murray, of the Seventh District.

A COLORED THIEF.—Abner Allison (colored) was captured by Policeman Myers yesterday, with twenty pounds of iron, which he is supposed to have stolen. Alderman Toland sent him below.

THE DEATH WARRANT.—This morning the Sheriff of the city received the death warrant in the case of Gerald Eaton from Governor Geary. This afternoon the document will be read to the doomed man by the Sheriff.

EXHIBITION OF SUPERB PAINTINGS.—The collection of Goupil & Co. will continue on exhibition at the Academy of Fine Arts this (Saturday) evening until 10 o'clock. Admission free.

THIRD EDITION

THE TWITCHELL CASE.

THE OPINION OF THE COURT.

SENTENCE OF DEATH.

Judge Brewster, in delivering the opinion of the Court, referred to the fact that counsel for the prisoner had sat quietly listening to the charge of the Court, and had offered no objection to it; in fact, they had even withdrawn suggestions that they had made, and that the Court was about to answer; but now, when the time for correcting anything that was wrong before the jury had passed, they attacked the charge and endeavored to make its supposed errors ground for a new trial. Entering upon the details, his Honor said:—

Commonwealth vs. George S. Twitchell, Jr.—Motion for a new trial.

BREWSTER, Judge.—This is a motion for a new trial. Twenty-five reasons have been submitted in support of this application. They have been argued at great length and have received from us most careful consideration. We shall endeavor to dispose of them in their order.

The first, second and third reasons refer to certain remarks alleged to have been made by the District Attorney in his closing address to the jury.

We have not been referred to any case in which a new trial was ever granted for similar reasons. If the conversations alluded to were made they were perhaps but a natural reply to the arguments addressed to the jury on behalf of the defendant. No objection was made at the time and no complaint can be now interposed.

The reasons, from four to twelve inclusive, complain of the charge. It might be a sufficient answer to all of these to say that upon the conclusion of the body of the charge, the Court stated that certain points had been presented by the learned counsel for the defendant which would be read and answered. One of the counsel for the defendant thereupon rose and stated that all the points thus presented were withdrawn—that the defendant had no exceptions to the charge, and that the counsel simply desired to invite a correction as to the statement of the evidence upon two points. These were suggested, and the jury were directed to regard the charge as amended in all of these particulars.

After this public disavowal of all exceptions, it might not, perhaps, be deemed an arbitrary exercise of our discretion to hold a party to his open indorsement of the correctness of the charge. We are not aware of any principle which allows a defendant to mislead a judge not merely by failure to object, but by public approval, and the statement of minor corrections which he prays may be made.

After all this, when everything he desires shall be said, is stated, and the whole instruction is moulded exactly to his wish, his criticism upon disjointed members of the charge may, perhaps, be fairly called an afterthought.

No exception could, under such circumstances, be subsequently allowed in any case, civil or criminal; and no Judge could, after such a statement, certify that an exception was "then and there" rendered.

This, however, is but an additional reason for a careful consideration of all that has been stated and argued in this behalf. Anxious to correct any possible error which can be discovered in this record, we have examined the charge with careful scrutiny, and are all agreed that there was no injustice to the defendant.

Complaint is made as to the instructions upon the law. The defendant's counsel had repeatedly stated that Mrs. Hill had been brutally murdered. They vied with the Commonwealth's officers in denouncing most fiercely the barbarity of the deed. There was not then—there is not now—any question as to degrees of crime.

Nor could there well be any disputation on this point. There was no evidence, no pretense of hot blood, of conflict, of self-defense, of intoxication, of anything which could define this crime as aught else than murder in the first degree. To the present moment nothing has been even suggested in reduction of the grade of the offense, nor is it contended that the respective positions of the counsel in their arguments to the jury were misreported in the charge.

It frequently assists a jury to be reminded of the points assumed by the different parties, and provided this is done truthfully, there can be no possible complaint. In the present case the statement of the Court was in exact conformity to the fact. The jury were not informed of the opinions of the Court as to the degree of the crime. They were told that the question had not been raised, and that all the counsel agreed upon this element of the case. But they were cautioned that although the counsel for the defendant had denounced this offense as brutal—as wilful, deliberate, and premeditated—still it was the duty of the jury to act upon no concession.

The language upon this point was most explicit. The jury were thus advised:—

It is proper, however, that in a case of so much magnitude nothing should be taken for granted. All that preceded this was but a repetition of what counsel had frequently and loudly proclaimed. There was not the slightest intimation from the Court of any opinion upon the subject.

If a defendant charged with homicide sees fit to denounce the crime as brutal, cold-blooded, premeditated—and in addition to that to set up as his defense that the perpetrator was a burglar, who murdered an unoffending woman for the purpose of obtaining the money which, according to the defendant, she habitually carried in her bosom, it surely does not lie with him to complain of a Court who, referring to this line of defense, cautions the jury "to take nothing for granted, but to listen to the statute which defines the different grades of murder and requires the jury if they find a person guilty, to ascertain in their verdict whether it be murder of the first or second degree."

The whole section, including the words just quoted, was read. Definitions were then given:—

First. Of murder generally.
Second. Of murder in the first degree.
Third. Of murder in the second degree.

And here the charge as to the law of the case rested. There was no instructions to the jury on the subject, no intimations even of an opinion—there was indeed the absence of all advice as the degree towards which the facts pointed—the giving of which the Supreme Court have recently declared to be "entirely proper."

In support of this reason we were referred to Rhodes vs. Commonwealth (12 Wr., 369): but neither in it nor the still later case of Lane vs. Commonwealth (Pittsburg *Legal Intelligencer* of November 29, 1868, p. 77) was the question left to the jury. In the first case the judge said:—

"If you find the defendant guilty, your verdict must state guilty of murder in the first degree."

In Lane vs. Commonwealth, the Judge instructed the jury thus:—

'There is no middle course, he (the defendant) must be convicted of murder in the first degree, or acquitted of everything.'

These directions were condemned in learned opinions of Woodward, C. J., and Thompson, C. J. In the latter case the Chief Justice, after exposing the error of the charge, says:—

"It is only with the questions of law raised that we have to deal; and only in the particular discussed do we see anything to be found fault with, nor are we to be understood as finding fault with a practice which is entirely proper of judges freely advising juries as to the duty of ascertaining the degree of murder towards which the facts seem to point, always leaving them, however, free to deliberate upon, and the duty and responsibility of finding the degree, if they convict of murder."

In Kilpatrick vs. Comm (7 Casey, 294) my learned brother Judge Ludlow, said:—"We will neither temporize nor equivocate in a cause of this magnitude. The Court are of the opinion from their view of the facts of the case, that if the offense with which this prisoner is charged is not manslaughter, it is murder in the first degree, as the jury believe from the evidence that the act was committed in the heat of blood, or upon a sudden quarrel, or with coolness and deliberation."

This was made the subject of exception. But the Supreme Court said, per Strong, J. (p. 215), "A judge may rightfully express his opinion respecting the evidence, and it may sometimes be his duty to do it, yet not so as to withdraw it from the consideration and decision of the jury."

In Com. vs Green (2 Ash. 289), King, P. J. in a charge which was really a treatise upon this subject, used this emphatic language:—"Upon the supposition assumed, we are of opinion that the prisoner is guilty of wilful, deliberate, and premeditated murder. * * * Provocation in this case is out of the question."

In Cathcart vs. Commonwealth (1 Wr. 112) the Judge in charging the jury stated the positions relied upon by the Commonwealth:—"As a reason for inferring malice and a design to kill," prefacing the remark with the words, "Again it is urged by the Commonwealth," etc. It was agreed that there was error in submitting to the jury the falsity of the defense, "as an inference of malice and design to kill."

But the Supreme Court affirmed the correctness of the charge.

As evidence of premeditation here, we have the kitchen poker carried up stairs into the dining-room—a wound inflicted upon the part of the skull known to be the weakest—the mortal blow given upon a recumbent body—and the finger almost severed whilst the hand (according to the last argument submitted to us on behalf of the defendant) was shading the face of the unfortunate lady from the light.

The fifth reason complains that the evidence of Officer Thorp was not stated in the analysis of the testimony on the point as to whether the unlocking of the door could be heard. It is sufficient to say that the name of officer Thorp was distinctly mentioned along with the other witnesses upon this point, and the whole testimony on this branch of the case without any detail of particulars, was summed up and referred to the jury with the direction to "carefully consider all that had been said upon the subject."

The sixth reason assigns as error the remark that "a drop of blood" was found on the blanket. It is admitted that blood was found on the blanket, but it is argued that the Court should have called it a "smear," or a "stain," and not have referred to it as a "drop." We are at a loss to appreciate the force of this criticism. The fact, so far as it was material, was the existence of blood on the blanket. It surely matters not whether it is called drop, stain, or smear.

It was undoubtedly of importance to distinguish the marks upon defendant's clothing and to speak of them accurately, so as not to confound sprinkles with smears. But no one could be misled by applying the word "drop" to the stains found on the blanket. This appears more clearly by reference to the succeeding sentence of the charge, in which the jury were told that Dr. Levis informed them "that the spots on the blanket, oil cloth, etc., were blood."

The seventh reason charges that the Judge omitted to call the attention of the jury to the position assumed by the defense that the sprinkles of blood found upon the prisoner's shirt-cuffs and collar had been caused by the change of his clothes upstairs. The language of the Court upon this point was as follows:—"On behalf of the defendant it has been urged that small particles of blood could have been sprinkled on the shirt from his hands and from the lapel of his coat. On this point, and the absence of any brains on the poker, Dr. Paine has been examined."

This reason was not pressed upon the argument.

The next objection to the charge is because of the statement that the prisoner "had spoken of the deceased insultingly." The reason then goes on to admit that there was evidence upon this point, but argues that it was "at least six months before the murder, and therefore too remote to be admitted as a threat." My notes show that the defendant used very insulting language when speaking of the deceased, and it does not appear that the conversation was remote, as stated. There was no objection to the reception of this testimony when the questions were propounded, and no motion to strike out the answers was interposed at any time.

There was allusion made to the evidence of Mr. Gilbert in one of the points presented for charge, but when the Court were about to read and answer the points they were all withdrawn. Eight objections to various offers—made when Mr. Gilbert was on the stand—were sustained, and two motions to strike out portions of his testimony were allowed. Every doubt upon these questions of evidence was thrown into the scale of mercy, and every point which the ingenuity of learned and vigilant counsel could suggest was patiently entertained and carefully considered.

The ninth reason assigns for error that a line was quoted from Mr. Hollingshead's testimony. This witness said that he knew "to whom the shingles belonged—that they belonged to Mr. Wallace of Norfolk." The complaint is that the witness afterwards stated that he had heard that the shingles belonged to Mr. Wallace. The remedy here was to move to strike out the testimony, or to ask an instruction that it should be disregarded by the jury. Neither of these steps was taken, and no injustice could possibly have resulted to the defendant from this reference to Mr. Hollingshead's evidence, for it was not contended that the shingles belonged to the defendant.

The tenth reason is answered by the notes, which show that the instruction did not misconceive the evidence.

The eleventh reason complains that Altgelt's testimony was not referred to in the analysis of the evidence upon the question of the time of the commission of the murder. It was intended in this part of the charge to group together the statements of the witnesses who went into the house and saw the body.

Mr. Altgelt did not belong to this class, and was accordingly not noticed in this connection. He had been referred to however, at some length, and the jury had been instructed that if Altgelt were believed "the defendant's theory of a burglary would be strengthened or established." And, again, "in support of the allegation of a burglary, consider the open back doors—the evidence of Altgelt and any other facts you can recall."

Nor was any injustice done to the defendant in this behalf, for the question of time was in no way withdrawn from the jury.

The twelfth reason suggests that the Judge should have called the attention of the jury to the fact that Altgelt had communicated to others that he had seen two men leave the house, and to the omission of the District Attorney to contradict Altgelt in this particular.

These matters were of very trifling importance. They had been urged upon the attention of the jury by the defendant's counsel, and unless it is the law that a Judge is bound to repeat and enforce every argument of the accused, there is surely nothing in this reason. The trial occupied over a fortnight—with many double sessions extending to a late hour. To require that a charge should, after such an investigation, not only notice all the minutiae of a case, but dwell upon every omission of counsel, would impose upon the court a labor in many cases impossible of performance, and in all cases useless in its application. Such a recapitulation of a case would serve rather to bewilder the memory than to enlighten the understanding.

It is also to be borne in mind in the consideration of these reasons that the jury were distinctly told that "no comment the Court might make on the evidence was in any way binding upon the jury."

They were also instructed "to give to the defendant at every stage of their inquiries the benefit of his character, of the presumption of innocence until guilt is clearly established, and of every reasonable doubt."

They were further warned to "guard themselves most carefully against any preconceived ideas which might lead them to reason inaccurately."

They were even cautioned not to accept the admission that Mrs. Hill had been murdered, but "to look at all the surroundings to see whether they repelled every presumption of suicide—for it is well," the court added, "to accept no concession and to prove all things."

In support of the defense that the deed had been committed by a burglar, the testimony of Mr. Altgelt was referred to at some length. The jury were also reminded that the defendant's witnesses, Messrs. Wilbur, Thorp, Cliff, Holt, and Cassidy, had proved that the door could be unlocked without making any noise which could be heard by a person on the outside. The substance of their evidence was recited and the Court added, "as very much in this case may depend upon this apparently trifling circumstance, you will carefully consider all that has been said upon this subject. If you find that the noise of unlocking the door could not have been heard by Sarah Campbell, then you will of course reject that portion of her testimony."

The jury were also told that if they believed Altgelt, the defendant's theory of a burglary would be strengthened or established. More than this, the jury were told they could adopt the theory of a burglary, even though they did not credit Altgelt. The language of the charge on this point was in these words:—

"If you do not believe him (Altgelt), do you find from the circumstances of the back doors being open, or from any other fact you can recall, that the premises were unlawfully entered? * * * It is for the jury to take a careful review of the whole case at this point. In support of the allegation of burglary, consider the open back doors, the evidence of Altgelt, and any other facts you can recall."

The evidence of Doctors Gross, Maury, Mitchell, Thomas, and Paine was referred to, not only in connection with the question as to whether the wound on the temple and the lacerated wounds could have been caused by the poker, but also as to the sprinklings of blood on the garments of the defendant; and in consideration of this latter point, the jury were told that they must "keep steadily in view all the presumptions in favor of the defendant, and all the rules governing a case of circumstantial evidence," to which their attention had already been directed.

To this was added the admonition to "guard themselves carefully against the conclusions to which the mind is sometimes incautiously led by such appearances, and to see here, as elsewhere, that they decided this question solely in the light of their calm judgments, and the principles of the law." The names of all the defendant's witnesses who testified to his possession of property, were stated, and the substance of their testimony recapitulated.

The various positions of the defense as to the character of Mr. Gilbert, the gift of the house and furniture to Mrs. Twitchell, the temper of the dogs, the absence of blood stains in the basin and near the hydrant, the large income of Mrs. Hill, the want of motive, the impossibility of hearing in the bed-room noises made in the dining-room, the habits of the deceased, the friendship between her and defendant, the failure to find any money or weapon in the cess-pool, and the names of the witnesses, with the substance of their testimony, were all stated at length.

The jury were also reminded that the defendant had proved a good character for peace and integrity, and that this evidence was not only decisive in favor of defendant where a doubt existed, but might be sufficient to create of itself the doubt entitling to an acquittal. And, in conclusion, they were again reminded of the rules which should govern the consideration of circumstances, and of their duty to weigh them carefully, and to give the defendant the benefit of every rational doubt.

It is perhaps, therefore, not a matter of surprise that after the acceptance by the Court of all the corrections suggested by the defendant's counsel as to the recital of the testimony, the "points" were withdrawn, and the public statement made that there was no exception to the charge.

In the patient review we have bestowed upon this case during the argument of the thirteen hours upon the reasons, and our subsequent perusal of the charge, my brethren have been unable to find that there was any error in the instructions to the jury.

We pass to the consideration of the remaining reasons, which relate to the impanelling of the jury, the rulings upon questions of evidence, the discovery of additional evidence, and the usual suggestions that the verdict is against the law and the evidence. It is said there was error in issuing venires for a number of talesmen greater than the actual number of jurors to be supplied—that is to say 11 have been passed as unchallenged, but are still unsworn, and the defendant has in reserve the whole of his 20 challenges—the panel being exhausted by challenges for cause, the Court must order a venire for only one talisman, because eleven are in the box. This would lead to most interminable delays. The sheriff would have to bring in the wheel, draw five names, select the nearest resident, and failing to serve him until he returned to his home at night, the trial would be suspended many hours to bring in a solitary talesman, who might have an opinion or a scruple against capital punishment, which would be sufficient ground for a challenge for cause. If he passed through this ordeal there would still be a score of peremptory challenges in reserve, and the same operation would have to be repeated, to the annoyance of all the jurors locked up during the execution of several hundred special venires, and to the utter defeat of justice.

The law requires no such mockery, and we do not feel disposed to strain its words so as to burden a trial with delays in addition to those already existing.

This question has recently been examined by my learned brother Judge Pierce in the case of the Commonwealth vs. Gerald Eaton decided at the present term. Upon the authorities cited in his opinion, and for the reasons so clearly stated by him, we have no hesitation in ruling this point against the defendant.

It is also argued that when certain persons had been passed as unchallenged, they should have been sworn without waiting until twelve had been so drawn.

It is a sufficient answer to this proposition to say that it has never been accepted as the practice in this Court, and that, if adopted, it might lead to great injustice. In McFadden vs. Commonwealth (11 Harr 12) eleven jurors had been empanelled when the venire for talesmen issued. Upon the return of the venire, the tenth juror was challenged for cause, the challenge sustained, and the proceeding receives the sanction of the Supreme Court.

The fourteenth reason assigns for error the refusal to permit the defendant to withdraw his peremptory challenge against John Thornton.

Upon the argument this reason was very properly withdrawn. The action of the Court is sustained by principle and by authority, for the privilege of challenging is a right not to select, but to reject (U. S. v. Marchant, 4 Mason 158; 12 Wheaton, 480; State v. Smith, 2 Iredell, 402), and the point before us is directly ruled against the defendant in Rex v. Parry 7 Carr. and P., 836; State v. Creasman, 10 Iredell, 395.

The fifteenth reason is in these words:—

"Because the Court admitted statements of witnesses which were not evidence, and subsequently sought to cure the irregularity by instructing the jury to disregard them." Upon the argument we were informed that the matters thus alleged to have been admitted and stricken out, were certain statements made by Joseph Gilbert and William Gregg.

Joseph Gilbert was asked what the defendant said to him after Mrs. Hill had concluded the bargain for the house and had left Mr. Gilbert's office. The witness answered that "he drew up the agreement in favor of Mrs. Hill, and showed it to defendant, and he said he wanted the agreement made in his name, which was done. Mrs. Hill had left." The defendant then objected to evidence of the contents of the paper. His objection was sustained. He then moved to strike out the words "which was done." His motion was granted, and the jury were instructed to disregard this part of the evidence.

The Court here admitted nothing. The witness had been allowed to proceed without interruption or objection. The moment a point was presented the witness stopped, and every motion made by the defendant was allowed. Surely there was herein no error of which the accused can complain. The same remark is applicable to the other portions of Mr. Gilbert's testimony. No objection had been interposed, and as soon as motions were made to that effect the sentences were stricken out. Indeed, this was carried to the extreme of mercy, for one of the answers was in response to a question on cross examination; but here, as elsewhere, every doubt was resolved in favor of the accused. The testimony of Mr. Gregg is upon a slightly different footing.

The Commonwealth called William Gregg. He was sworn, and said he knew the defendant; he "applied for a loan of money last June." This was objected to "as too remote, and not showing the defendant was pressed." The objection was overruled. The witness added, "It was in the neighborhood of $1000. I did not lend it to him." The Court thereupon instructed the jury to disregard this evidence.

It will be noted that the only objection came *after* the witness had made the statement that the defendant "had applied for a loan of money last June." If this were incompetent, no objection could cure the difficulty. The motion should have been to strike out or to direct the jury to disregard the evidence. (Steamboat Dictator vs. Heath, v. 6, P. F. Smith, 290.) Strictly speaking, therefore, the defendant cannot complain, for the evidence was heard by his permission, and if the objection, which came too late and was not in proper form, was acted upon to the defendant's advantage in the manner in which it should have been presented, he has no ground of complaint. My brethren, however, are of opinion that the evidence should not have been stricken out.

The fact that a loan had been requested is perhaps as convincing evidence that the defendant was pressed for money as if the money had been actually lent.

The sixteenth reason is in these words:—"Because the Court admitted as evidence of defendant being pressed for money the statement of Mrs. Hill to Joseph Gilbert, that the defendant and his wife had robbed her."

It is a sufficient answer to this to say that the Court did not admit Mrs. Hill's statements against the defendant for any purpose whatever, and that the first evidence on the point of an accusation of robbery came from the statement of the defendant himself as repeated by Mr. Gilbert. This witness testified that the defendant told him—"He had a terrible time with the old lady; she accused him of robbing her." This was before the offer to prove that defendant kept three horses, etc., which was followed by an objection ruled out by the Court, but subsequently established by the defendant's witness, Mr. McCullough.

The seventeenth reason complains that the defendant's bank account was admitted upon an assurance that it would be followed by proof of inability to pay rent, "which latter fact the Commonwealth utterly failed to show."

The remedy for the case alleged in this reason would be a motion for an instruction to disregard the testimony. The fact, however, is that the Commonwealth did not offer in this connection the inability to pay rent alone, but it and "other things." The offer to establish the inability to pay rent broke down because of other objections and of the refusal of the landlord to appear; but the Commonwealth did show that the defendant was unable to pay other debts.

In Webster's case (Binn's Report, 165) the bank book of the accused was admitted and proof of the indebtedness of a defendant was allowed in the same case, and in the cases of Colt charged with the murder of Adams; of Robinson, charged with the murder of Suydam (Wh. Cr. Law, § 851); and of Winnemore charged with the murder of Mrs Magilton (Oyer and Terminer of Philadelphia). In the last case a writ of error was refused by the Supreme Court.

In Webster's case indebtedness was shown to persons other than the deceased (Binn's Report, 151, 160), and one of the notes bore date more than six months before the murder. (Dr. Stone's Report 92, see also Ibid 97, 258).

It is said that we should have allowed evidence to go to the jury that the defendant was cheerful on the Tuesday before the murder, and that this testimony would have been in rebuttal of the allegation that he was pressed. We do not think the offer was admissible.

The nineteenth reason complains that the Court rejected evidence of the defendant's own statements. They were, of course, not competent, nor could they be introduced because of a previous cross-examination which was directed to the examination in chief.

The twentieth and twenty first reasons assign as error the rejection of "an opinion" of a medical expert "based upon experiments recently made," "and the result of said experiments." If a jury can be bewildered by such confusions of science we might as well abolish the form of jury trial. A woman is found murdered. Near her body lies a poker stained with blood, and adhering to it is a human hair corresponding in color to the hair of the deceased, and shreds of wool. A respectable physician describes her wounds and says, in substance, that one of the fractures and a number of the cuts could have been caused by the poker. Now when an accused person offers to show that the stains are not blood—that the hair is not human, or not from the head of the deceased—that the shreds are not wool or not from her cap—or that, in the opinion of medical experts, the instrument found would not cause those wounds—he follows directly in the line of the Commonwealth's evidence. This prisoner chose only to pursue the last line of defense. The others, however, were all open to him. But he wished to go further: to do what never has been permitted before in the face of an objection. He proposed to show that some other arm than the defendant's could not, with some other poker than that in evidence, inflict such wounds upon some other skull. Of what avail was all this?

The weapons, arms, and skull were confessedly different.

The experiment must have been made on the skull of a corpse. These blows were inflicted upon the head of a living person. The expert must have handled a poker with the view to experiment. The guilty actor in this scene had a motive which might give far greater power to his blow than any force that could be invoked by mere philosophy teaching by example.

But aside from all these refinements, the offer contradicted nothing. A physician, in one of our criminal trials, swore that the defendant's knife could not produce the wound found upon the throat of the deceased. During a recess the then District Attorney, now of counsel for this accused, directed another surgeon to make the experiment, and the last expert was able to contradict the first, by swearing that the weapon he had in his hands actually made a still greater wound, and had decapitated a corpse. In Com. vs. Gelsenberger (Oyer & Ter. Philadelphia, Dec. Sep. 1858, No. 679), a very respectable physician swore that a blow from the defendant's fist could not have broken the skull of the deceased. A piece of the bone was however produced, and it was almost as thin as tissue paper. Dr. Parkman's skull was fractured with a grape-vine stick. (Binn's Rep. 566.)

In Champ vs. Commonwealth (2 Metcalfe, Ky. Rep., 27), cited by Judge Ludlow upon the trial, Judge Duvall delivering the opinion of the Court of Appeals, said:—"It is agreed on all hands that such opinions (of experts), to be admissible, must always be predicated upon and relate to the facts established by the proofs in the case. Mere professional opinions upon abstract questions of science, having no proper relation to the facts upon which the jury are to pass, evidently tend to lead their minds away from the true and real points of inquiry, and should therefore always be excluded.

There is, therefore, nothing in this reason which entitles it to consideration as a question of law. As matter of fact, the defendant cannot stand upon it, for his witness stated that he did "not think any poker of this material could have inflicted the wounds, because it is not misshapen sufficiently; it could not have been used four times without bending. * * * It is possible to break the temporal bone with the angle of this poker and to drive the tongue through the fractured skull. There is authority for the assertion that a penetrating wound can be made by a poker. A repetition of the blows would break the bones more. Dr. Maury stated that he thought "it extremely doubtful that the wounds could have been inflicted with this instrument, and we see it as it is. * * * It is possible to make a punctured fracture at the temple with that poker; it would be possible to make a lacerated wound with the poker; undoubtedly the whole skull could have been beaten into small pieces with that poker; it depends on the velocity of each blow and the rapidity with which they are repeated; the temporal bone could have been broken with the heel of the poker, and then the tongue drawn in; have known a skull to be fractured with an umbrella; it was driven into the skull above the eye."

The twenty-second reason complains of the admission of the evidence of Mr. William J. Post.

"The Commonwealth offered to show by this witness that at or about the time spoken of by the defendant's witness, Altgelt, and immediately before, nothing unusual occurred about the premises." This was objected to, and argued with considerable earnestness. I had some difficulty as to whether this was strictly admissible in rebuttal. My brother Ludlow was, however, very decided in his opinion that the evidence was admissible, and it was accordingly heard.

Subsequent reflection has satisfied me that Judge Ludlow was right and that I was in error.

The defendant asserted that the murder had been committed by a burglar. His witnesses had proved that noises in the dining-room could be heard more readily in the street than in the defendant's bed-room. It was also in proof that Mrs. Hill had two dogs, who were watchful and were generally with her following her about the house. It would seem, therefore, that it was competent for the Commonwealth to prove by as many witnesses as they could produce that they had seen the house shortly before the murder; had stood near it; had seen no one enter or leave the premises; had heard no bark of dogs—no cry of murder, etc. All this was in direct contradiction of the theory of a burglary and if the evidence was admissible at any stage of the trial, the fact that it was received in rebuttal is not error. (Finley vs. Stewart, P. F. Smith, 192.) In Commonwealth vs. Armstrong (Oyer and Terminer of Philadelphia) evidence of the most important character was admitted on behalf of the Commonwealth after the testimony had closed on both sides and the arguments had commenced.

The twenty-third reason assigns "after-discovered evidence." We have heard nothing in support of it which entitles it to consideration. (See Com. vs. Flanagan 7 W. & S. 423).

And lastly, it is said that the verdict was against the law and the evidence.

We have carefully reviewed the testimony, and are of opinion that we cannot disturb the verdict.

Full time was given to the defendant to prepare for trial. He asked for no continuance. The jury were of the defendant's selection; they listened to the whole case with great patience and untiring attention. Separated from their families and business for upwards of a fortnight, at the most important season of the year, they yet exhibited no signs of weariness, and seemed throughout anxious to hear every syllable of the evidence and arguments. We were anxious to rule every objection raised by the defendant in his favor, and, as already remarked, so charged the jury that all the points presented were promptly withdrawn.

The evidence seemed to establish, link by link, a chain of strong circumstantial evidence against the accused. As it was offered, item by item, it was jealously watched and fiercely contested. The defendant did not undertake to dispute that this was a case of murder in the first degree. As already stated, he so admitted, and denounced alike the crime and the perpetrator. Any other position would have involved a concession which would have rendered his case a desperate struggle. In view of all the testimony, it would have been monstrous to suggest that this homicide was justifiable or excusable. The blow in and through the temple—the depth of a finger through the temple—could hardly have been received by a person in an erect position.

If Mrs. Hill were lying down there could be no pretense of self-defense; still less ground, if possible, was there for the supposition of accident, suicide, or even of a quarrel, which would reduce the grade to manslaughter. The deceased had no weapon, the living had no marks of wound, or bruise, or even scratch. The number of the blows, the blood-stained cushion the arc of blood upon the walls and floor, the upraised window, the stain of blood outside, the body in the yard, all cried out against any supposition of manslaughter, or even murder in the second degree. There certainly was an intent to take life, and it was equally certain that the defendant was not intoxicated. There was not the fragment of a shred upon which a defense could hope to reduce the degree, and it would seem therefore to have been alike the dictate of skill and the command of necessity to go to the jury upon the broad question of guilt or innocence.

Contesting the case upon this issue, the defense early suggested the theory of burglary. A witness was examined to prove, amongst other things, that a certain man "used to come and work about the house. When Mrs. Hill had anything to do for him he did it. The dogs knew him very well. He was there Sundays. He came several times. She called him Conrad Smith." These answers were given to separate questions, and were evidently designed to show that the person referred to had access to the house, came there on Sundays and was known to the dogs.

When it is remembered that the murder took place on Sunday evening, and that the Commonwealth had proved that no noise of barking had been heard—the significance of this item of the defendant's proof is easily appreciated. This was followed by the evidence of Mr. Altgelt to the effect that two men had been seen by him to leave the front door. The theory attributed to the defense by the Commonwealth as to Conrad Smith, was disavowed on the production of that person, and the evidence of Altgelt submitted to the jury was rejected by them. If this part of the case was unworthy of belief the whole defense crumbled and left the evidence of the Commonwealth in all its power, strengthened rather than diminished by this fruitless attack.

As was most forcibly remarked by Strong, J. (In Cathcart v. Com., 1 Wr., 113):—"The fabrication of false and contradictory accounts by an accused criminal, for the sake of diverting inquiry or casting off suspicion, is a circumstance always indicatory of guilt."

The failure, therefore, of the defense let in the whole train of circumstances. The defendant, his wife, and Mrs. Hill in the house, all others excluded. The blood upon the walls and floor; the upraised window; the bloody cushion; the stains upon the door, oil-cloth, blanket, furniture and garment; the absence of the dogs; the stillness of the house; the order of the furniture; the defendant's conduct and words—all spoke out.

The shirt, cuffs, and collars were up stairs when the defendant handled the corpse. Yet those articles were stained. The explanations of the defendant in this behalf were all patiently heard by the jury, and they have not regarded the statements as satisfactory.

The stain upon the inside of the coat could not have been received from lifting and carrying the body if the coat was buttoned at the time.

The explanations offered as to its presence were not regarded as satisfactory. Have we the right to set aside the verdict under the circumstances?

The tests of such an application are these:—

Was there any evidence to justify the verdict?

Is it clearly against the weight of the testimony?

Is there any reasonable hope that another trial would produce a different result?

Applying these questions to the record, it would seem impossible to disturb this verdict.

The learned counsel for the defendant, as already stated, admitted (as I think with great propriety) the barbarity of the act which deprived Mrs. Hill of life. The following extract from the phonographic report of the trial is supported by recollection of the able arguments presented by the defense, and condenses this whole case into a single sentence.

"On this Sunday night, when the ministers of God were performing their sacred offices throughout this broad community, this poor defenseless old woman was brutally murdered; thus far we agree with the Commonwealth. * * * We cannot deny the terrible fact that Mrs. Hill was murdered."

With this very proper admission as to the law, the whole defense rested upon the allegation that the defendant was not the person who struck these fatal blows. Consistently with truth, with law, and with reason, there was no other line of defense open for the accused. Patiently heard and fairly tried, this issue has been decided by the jury against the defendant, and the law cannot disturb their verdict.

The motion is therefore overruled.

As the Judge pronounced the last ominous words, "the motion for a new trial is overruled," a silence, lasting for the space of one or two minutes, fell upon the crowd.

District Attorney Sheppard at length arose and said:—

"May it please your Honors—The Court having thus overruled the motion for a new trial in the case of the Commonwealth vs. George S. Twitchell, Jr., who has by the verdict of the jury been found guilty upon the bill of indictment which charged him with the murder of Mrs. Mary E. Hill, it therefore becomes my official duty in behalf of the Commonwealth to move as I now do, that the judgment of the law, of Pennsylvania, in such cases made and provided, may be pronounced upon the prisoner."

Mr. Sheppard took his seat, Twitchell, in the dock, arose upright as the Clerk asked him:—

"George S. Twitchell, Jr., have you anything to say why the sentence of death should not now be pronounced upon you according to law?"

At this juncture, while everybody waited in silence for the answer of the doomed man, and just as he was about giving it, McCully, his steadfast friend, who had been sitting close by the rail of the dock, uttered a suppressed cry, and sank from his chair in a swoon. A commotion at once ensued. Many imagined that the prisoner himself had been overcome by the terror of his situation; the whole room lifted on tip-toe to ascertain the truth. While some of the officers of the Court shouted "order" and "silence," others of them hastened for water, and made quick efforts to revive McCully. A minute sufficed to accomplish this, and then again all was as still as the grave. Twitchell had watched the fainting of his friend, himself unmoved, at least so far as the muscles of his face and the bearing of his body were concerned.

He now answered, rather indistinctly, the call of the Clerk:—

"All that I have to say is, that I have been tried and convicted of a crime of which I know nothing."

He spoke no other word, but stood calmly looking at the judges.

Hesitating a minute—watching—with his eyes fixed upon the face of the prisoner—for any further remarks—Judge Brewster said:—

George S. Twitchell, Jr., the accusation preferred against you by the Commonwealth has been examined with great patience and with an earnest desire to accord to you the fullest rights secured by the Constitution and the laws. The jurors who tried you were accepted by you when your challenges were still unexhausted. They deserved your confidence, for no men could have heard your case with greater fairness or impartiality. You were ably and skilfully defended. All that learning, industry and eloquence could suggest was most earnestly urged on your behalf. The Court was anxious to throw every doubt into the scale of mercy.

Notwithstanding all this you have been convicted of the highest crime known to the law, and a most exhaustive argument in your behalf has failed to satisfy any member of the Court that the verdict should be disturbed. This trial has thus demonstrated that secret murder committed in the privacy of a home can neither be shielded by the absence of witnesses or the position of the accused. Although the victim may be dispatched in quiet, still every little drop of blood and every surrounding fact become in the ordering of Providence a witness pointing with unerring certainty to the criminal.

I shall not add to the pain of your present position by alluding to the circumstances of this case, but it would seem to be due to justice to declare that your trial has been conducted throughout with all the tender regard for life which marks the humanity of the law. Whilst Mrs. Hill was sent to her last account without the opportunity for even one short prayer, the law has been jealous of every right which the presumption of innocence could throw around you. She has given you every opportunity to prepare for your trial, the right of challenge to jurors, the privilege of being defended by able counsel, the benefit of every doubt, and the advantage of reviewing all the rulings upon every point.

When all this has resulted in your condemnation, she still in mercy gives you time for repentance and for supplication. Let me recommend you in all earnestness to avail yourself of this privilege. Obtain the counsel of devout men, approach with them the Throne of Grace. In fervent contrition and in sincere repentance seek Him whose mercy is all sufficient even to the washing away of blood. And now it only remains for us to declare the judgment of the law, which is—

That George S. Twitchell, Jr., the prisoner at the bar, be taken from hence to the jail of the county of Philadelphia, from whence he came, and from thence to the place of execution, and that he be there hanged by the neck until he is dead, and may God, of His infinite goodness, have mercy upon his soul.

(The preceding portion of the opinion will appear in full in our subsequent editions.)

As the last sentence of his Honor was pronounced upon the prisoner the four judges rose to their feet. When the sound of the words had entirely died away the people who thronged the place, glad to escape from the hall of judgment, departed.