# THE PITTSBURG DISPATCH.

WEDNESDAY, MARCH 25,

# THE NARRATIVE OF A CRIME

The Murder of Old Farmer Umberger, in Somerset County, and Conviction of the Nicely Boys.

LOOKING TO PATTISON FOR A REPRIEVE.

The Evidence Produced Against the Men Condemned to Be Hanged Next Week.

## STRANGE STORY OF A DARKLY-MYSTERIOUS TRAGEDY

Visit of the Assassins to the Old Homestead-Searching for Stolen Jewelry-The Fatal Shots-Death of Umberger-Alarming the Countryside-Rewards for the Murderers-Tracks in the Snow-Arrest of the Nicelys--Popular Feeling Against the Prisoners--Veracity of Witnesses--Proving an Alibi--A Verdict of Death--Charges That the Jury Was Influenced by the Mob--One Juror Recents--The Confession of John Beach--The Phrenologist's Mysterious Visitor--A Stranger Who Knew All About the Murder--Prisoners Break for Freedom--Crippled and Recaptured--The Nicelys Declare Their Innocence--Preparations for the Execution--Parents' Testimony for Their Boys--The Haunted Farm--Drift of Public Opinion--The Lawyers' Test.

old-tashioned latch and entered. There

were two of the visitors. The tallest, who

was afterward identified as David Nicely,

had his head bound up in two common red

handkerchiefs, exposing only his eyes and a

little of his cheeks. He wore a dark-gray

gave as a reason for his head being tied up

that he had been thrown from a buggy.

The shorter man, who was afterward de-

clared to be Joseph Nicely, had his face

covered by a mask or a false gray beard and

wig. The Umberger family could not de-

cide which it was, as their knowledge of

The men were invited to take a seat by

the stove, and Ella, the hired girl, was told

by her employer to mend the fire that their

visitors might warm and dry themselves

Arrival of Two Disguised Men.

The visitors and the family sat around the

stove for a few minutes talking about the

weather, crops, the price of produce and

other matters of interest to farmers. The

conversation was carried on mainly by the

smaller man, his triend being rather silent,

as became a man who had been thrown out of a

buggy. During the conversation the men

elicited the information that the farmer had

but one hired man, his grandson, who had

gone on an errand and would not be back

for some time, and that the only persons in

farmer, his wife, little granddaughter and

After awhile the smaller man said: "Mr.

Umberger, we are officers from Bedford

county. Peddler Maxom has been robbed

of a quantity of jewelry, and we are in

structed to search every house between Jen-

Umberger asked him if the warrant was

countersigned, and the small man replied

hat it had been backed by 'Squire Rauch,

of Jennertown. He drew out a paper, which

he read as a warrant, and said they had al-

ready searched two houses in the neighbor-

Search for Farmer Umberger's Wealth.

Farmer Umberger told the men that they

ould search the house, but they would find

nothing. Little Nannie was told to get a

light, and Umberger, his wife, the smaller

man and the little girl went into the parlor,

leaving Ella Stern and the taller man in

the sitting-room. The latter changed his

seat so that he could see into the parlor, and

remarked to Ella Stern that "there was a

others went into the bedroom, and after mak-

ing an examination there they went back

into the sitting-room, where the small man

said he had forgotten to look under the bed,

and wanted to examine the bureau for a

Umberger, the two men and Nannie Hor

ner went into the bedroom, which is in the

front of the house. Here the smaller man

insisted upon Umberger pulling out the up-

per drawer of the bureau, thus exposing the

contents of the second drawer, in which were

wo pocketbooks, which Umberger said con-

Your Money or Your Life.

Umberger picked up the books and placed

them in his inside vest pocket, and folded

his arms across his breast. He told the lit-

tle girl to go for her grandmother. The lat-

ter came into the room and said: "This

thing has gone far enough." Then the

whole party walked out into the sitting

The party had no sooner reached the sit-

ting-room than the small man, who had

and child screamed, and Ella Stern ran out

of the house to a neighbor's for assistance,

but owing to the distance which separates

dwellings in that neighborhood it was half

an hour before she returned. Mrs. Um-

berger ran into the kitchen and began to

ring the farm bell, which serves the double

purpose of a dinner bell in the day and an

Fell Dead at His Wife's Feet.

Several shots were fired, one of which

struck a joist in the ceiling and then

entered the wall. Two bullets entered

Umberger's body, one in the shoulder and

the other between the seventh and eighth

ribs toward the breast. The old farmer

staggered out of the sitting-room into the

kitchen, and fell dead at his wife's feet, as

rope. When Umberger fell dead be no

longer possessed the pocketbooks. They

were gone, and in them, his wife said, was

\$16,000 to \$20,000 in gold and greenbacks.

alarm bell at night.

ger, said: "Your money or your life!"

tained money to pay his hands.

talse drawer.

good deal of fun searching houses."

nertown and Johnstown."

good, naming the occupants.

after their walk through the storm.

masquerade costumes was very limited.

overcoat, red-striped overalls and a cap, and

In eight days from to-day Joseph and I knock at the door. The old farmer called David Nicely are to be hanged in Somerset | to his visitors to come in, they lifted up the iail for the murder of Herman Umberger on the evening of February 27, . 1889. The devices of the law have been exhausted in behalf of the prisoners, and their only hope now lies in the interposition of Governor

The case is one which has excited great interest throughout the State, and that interest has not abated, although two years have elapsed since the murder. The sensational jail-breaking episode, the pleas before the Pardon Board, and the cases that grew out of the tragedy in the rural courts, have all drawn public attention toward the condemned men and the evidence upon which they were convicted. In order to furnish readers with a complete and unprejudiced narrative of the tragedy and the trial, THE DISPATCH detailed a member of its staff to visit the scene of the crime. which virtually embraces both the counties of Somerset and Westmoreland. The result of that investigation is given berewith.

The evidence against the Nicely boys was sensational and the testimony was very contradictory. At the time of the trial almost everybody in Somerset county was firmly convinced of the guilt of the prisoners, and the verdict returned was the most popular document ever drawn up in that county. the house were those in the room-the The attempts of the prisoners to escape after their conviction but more strong! vinced the people of their guilt.

### THE STORY OF THE CRIME.

HOW FARMER UMBERGER WAS KILLED BY MASKED MEN.

He Was His Own Banker-A Quiet Hom Disturbed by Robbers-The Murder-The Search for Concealed Wealth-Died at His Wife's Feet-The Alarm Bell.

Herman Umberger owned a farm of 135 acres in Somerset county, on the Johnstown pike, about two miles from Jennertown, a village of less than a dozen houses. Umberger was about 71 years old, and bore a reputation for thrift and wealth. His farm was fertile and well tilled, and the old gentleman had added to his store by lending money on well-secured notes.

The old man's household consisted, besides himself, of his second wife, Nancy, to whom he had been married 30 years; Nannie Horner, 10 years old, and George Horner, 18 years old, grandchildren of Mrs. Umberger by a former husband, and the hired girl, Ella Stern. While the house was situated on the high road, visitors were few and far between, for their nearest neighbors lived half a mile away.

## Umberger Banked With Himself.

Shortly before the murder was committed Umberger began collecting on such notes as he held which were maturing, and notified his debtors to come to the front with promptness. Everyone in the neighborhood knew of this, and also knew that the old mun kept large sums of money in his house. There was another reason for this besides a distrust of the wayward cashier who leaves an empty wault and a bad reputation. The nearest bank was at Somerset, which could only be reached by driving 15 miles over very rough roads, a very heavy undertaking for a man who had passed his threescore years and ten.

As a result, the old gentleman often had large sums of money in his house. This he would keep in a couple of capacious, wellworn pocketbooks, which he concealed in the back of a bureau drawer in his bedroom.

Evening in the Farmer's Household. When dusk fell on the Umberger homestend on Wednesday evening, February 27, 1889, the family, with the exception of George Horner, who had gone to a store three miles away, were seated around the stove in the low-ceilinged living room. It was a dreary evening. Sleet was falling fast, giving to the snow-clad landscape a gray tinge, in sad harmony with the dark sky, hung low with clouds, while the rest less pines around the old house shivered and rattled their naked branches.

The evening meal was over, the housewife's work was done, the stock had been fed and were warmly sheltered in the great red barns across the road, which contrasted strongly with the little two-story dwelling, from which the white paint had fallen in flakes. The little granddaughter and the domestic were talking and laughing in | she was pulling with desperation at the bellwhispers, the old lady was plying her knitting needles, while Farmer Umberger, in his shirt sleeves, was wrapt in financial cal-

grandma, grandpap is shot," and fled to neighbor's house.

The ringing of the alarm bell and the

screams of the two girls as they fled along the dark country roads soon aroused the neighborhood, and ten minutes after Farmer Umberger fell dead the house was filled with farmers and their families, who found Mrs. Umberger still ringing the bell, while her husband's dead body lay at her feet.

The men who had committed the murder and robbery had escaped in the darkness, leaving no clew behind.

TRACKS IN THE SNOW

LEAD UP TO THE ARREST OF THE TWO NICELY BOYS.

merset Farmers Incensed by the Umberger Tragedy-Rewards Offered for the Conviction of the Murderers-Searching the Houses of Suspects.

When the news of the Umberger tragedy spread a perfect tempest of wrath was awakened in the bosoms of the farmers of Somerset county. This feeling was first aroused by the peculiarly flagrant character

but the latter was not positive. To offset this William McIlvaine said he met Beener and McCracken a little later, and that Mc-Cracken said Beener had asked him who the man was, but he did not know, and on the day of the hearing of the habeas corpus pro-ceedings McCracken said he did not know

PITTSBURG,

ceedings McCracken said he did not know the man.

Mrs. Mary Walter, who lived on the pike, two and one-half miles west of Jennertown, had seen two men coming along the road between 5 and 6 o'clock on the evening of the murder. She identified Joseph and David Nicely in court as the men, although she had not recognized them at the preliminary hearing several weeks before.

In addition to this tracks were found in the snow leading from the Umberger house the snow leading from the Umberger house over the mountains in the direction of Ligo-

nier.

On the Monday after the murder Joseph and David Nicelv were arrested at their homes. In Joseph's house was found a brown derby hat, a pair of gum boots with leather soles, an old rim-fire pistol which would not fire a cartridge, and a box containing center-fire and rim-fire cartridges. In David's house was found a gray cap, a pair of common realless stranged exactly. pair of common yellow-striped overalls, leather boots and a pair of gum boots, a rim-fire revolver with the chambers loaded. David was wearing, when arrested, a gray overcoat, with several patches of a darker

The prisoners were taken to the National Hotel at Ligonier, then kept by Watson Menoher, who was married to a sister of the Nicely boys. They were kept there all



David Nicely.



of the crime, and this feeling was intensified by the operations of what is now known as the McClellandtown gang, who shortly after banged and roasted a Somerset county farmer to make him reveal his hidden wealth. Somerset county is devoted almost exclusively to agriculture, and the farmers felt that there would be no safety for them in their isolated homes unless justice made an example of the criminals as a warning to others predisposed towards deeds of robbery

and murder. As a result of this sentiment the County Commissioners offered a reward of \$500 for the apprehension of the criminals, the Umberger family offered \$1,000 and others came to the front until the aggregate reward was over \$2,000.

The Home of the Nicelys. Four miles back of Ligonier, in Westnoreland county, and 15 miles from the Umberger farm, lived the Nicely family. The head of the family was A. A. Nicely, a man much respected throughout that section of the country. He owned a large and valuable farm, free of encumbrance, and had a neat little bank account in addition. The old gentleman and his wife belonged to the worshiped in a little frame church built by

The Nicely family consisted of four sons and four daughters, the latter married and living away from home. Joseph Nicely. the eldest son, who was then 37 years old, lived on a small farm which his father had cut off from his many acres. Joseph was being a woman of exemplary character and

strong religious principles. Thriving by His Industry

Joseph was industrious and bright. He had traveled through the West in his youth, and had become infected with the America spirit of hustling. He worked his own farm, helped his father, did the butchering for the neighborhood, and when there was nothing else to do went into the virgin forests and helped to get out lumber. Occasionally he would do a little trading, and barter cheap jewelry in articles not quite so his thrift and industry he always had a roll of bills in his pocket, was pleased with himself and content with the world.

Joseph would be in Ligonier very frequently, but, according to his own statements, which are uncontradicted, was but once in Somerset county before the Umberger murder, and then he went to Jennertown to serve a subposus. He was wellknown on the Westmoreland side of the mountains, and was very popular, always being ready with a smile and a cheery word for his friends.

David Was Delicate but Industrious. David, the youngest of the Nicely boys was 25 years of age at the time of the Umberger murder. He also was married, had three children and lived on his father's farm about a quarter of a mile from the homestead. David was a delicate man. He suffered from enlargement of the heart, which affected his whole system and prevented him from performing heavy labor or taking exercise of a severe character. Nevertheless David was just as industrious as the other members of his family. He helped his father farm, tilled the acres he occupied himself, which his father had promised to deed to him in the spring of 1889, and made

been conducting the search, pulled a reshoes for the neighbors.

David appeared satisfied with his let, He volver, and, pointing it at Farmer Umberand his family were always neatly clad, had no lack of the necessaries and comforts of life, and David was never without a few The farmer retreated, throwing up his hands, until he was backed against a bookdollars of ready cash to meet an emergency. David was seldom further away from home case in the corner of the sitting-room. The man again exclaimed, "Your money or than Ligonier, where he received his mail your lite," and began firing. The woman and purchased his groceries.

On the Track of the Nicelys Suspicion first fell upon Joseph and David Nicely when Lewis and Charles Varmear, father and son, said they had seen the two brothers crossing Laurel hill, on the Pittsburg and Phitadelphia pike, on the afternoon of the murder. The Vanmears were sawing logs on the slope of the mounttain 40 yards below the road, and could see only the heads and shoulders of the Nicelys, but were nevertheless positive of their iden tity. The Vanmeurs admitted on the stand that they had told different stories about the identity of the two men they saw, but intiknew to persons it did not concern.

in Ligonier on Wednesday noon and that the latter was starting along the pike over Laurel hill. Smith said that Seal Burnett was with him at the time, but Burnett de clared that it was not on Wednesday, but on the Saturday after the murder. Contradictory Evidence of Identification.

Lewis Bener and Edward McCracken met two men ascending the mountain on the afternoon of the murder. Beener believed

night, but were given considerable liberty, and had several opportunities to get rid of any articles in their possession which might be used as evidence against them. On the way over to Somerset the next day David gave the driver of the carriage his pocketbook, that it might be given to his wife or father. The book contained \$100 and some

FIXING THE CRIME.

EVIDENCE PRODUCED BY THE COMMON-

The Defense Afraid of the Effect of the McClellandtown Gang Trial-Plea for a Change of Venue Hopeless-A Suspect Threatened With Lynching.

Joseph and David Nicely were indicted by the grand jury on May 28, two months after the murder. The feeling against the prisoners had been strengthened instead of weakened by the lapse of time, and this was argely due to the operations of the Me-Ciellandtown gang, of which four members had been arrested for torturing and robbing Farmer Yoder. As the latter case was fixed Reformed Brethren or Dunkard faith, and for trial at the same term of court, the counsel for the Nicelys asked the Court to allow the murder case to be tried first, that it might not be prejudiced by the result of the Yoder case. This was refused,

In the McClellandtown case the attorneys had already asked for a change of venue, insisting that their clients could not get a fair trial in Somerset county. This was married and had seven children, his wife also refused, and that fact prevented the attorneys for the Nicelys asking the same privilege, as they felt that it would be futile and would hurt their case in the opinion of the public.

Threats of Lynching Made.

The sentiment in Somerset county was shown by the feeling toward Collins Hamilton, who was arrested on suspicion of heing concerned in the Umberger murder before the Nicely boys were captured. Hamitton soon proved his innocence, but not before his life was in danger at the hands of the infuriated farmers. The latter were pretty, but more substantial. As a result of a raid that the guilty persons might escape through some quibble of the law, and were preparing to take the matter into their hands by giving Hamilton a short shrift and a long rope when his innocence was proven conclusively.

The trial commenced on May 31 and lasted until June 8. The jurymen were Ephriam D. Miller, Josiah Newman, Jacob L. Manges, Frederick F. Walker, John W. Beck, John H. Hite, W. W. Davis, David J. Woltersberger, Jeremiah Henry, T. W. Black, C. W. Weigle and A. J. Sembower Judge Baer presided, District Attorney Biesecker, F. J. Kooser, John Cessas and S. U. Trent represented the Commonwealth, while Generals Koontz and Coffroth and Mr. Ruppel defended the Nicelys.

The Theory of the Prosecution The counsel for the Commonwealth produced witnesses for the purpose of proving that the Nicelys were the murderers of Farmer Umberger. Their story of the crime was in substance as follows: Shortly after noon on the day of the murder the two brothers left home and started for the Umberger farm on foot. At Ligonier they took the Philadelphia and Pittsburg road, which leads over the Laurel Hill Mountain. The day was cold and sleety and the roads were covered with snow and slush, making the walking very toilsome. The ascent of the mountain is four miles, while the descent on the western side is over two miles, and for all of this distance the road is studded with rocks from which the soil has been woshed, while bowlders of every size are scattered profusely on the path. This mountain road hangs in the air for nearly the whole of the six miles. On one side the mountain, clothed in laurel, pine and chestnut, rises abruptly hundreds of feet, while on the other hand the valley lies far below, and be-

A Fitting Road to Murder. When the sun shines and the forests are gay with their emerald foliage this mountain road, with its oppressive silence, only intensified by the occasional song of a bird or the echo of a woodman's ax, saddens the pirits of the wayfarer with its gloom. In the winter, when the trees are bare, their skeletons rise from the depths of the valleys and, climbing up the mountain sides, reach to the gray forbidding sky. The wind rushes by in gusts, while the gaunt branches shiver, sigh and moan, as if in pain; the mists sink down to embrace the naked trunks, and in a moment the scene becomes ghostly and unreal. It is a phantom forest Over this road the brothers are said to

taken their way in the twilight of a winter day, the shadow of projected crime on their minds, and over this road they retraced their steps with the stain of blood upon their souls. After the brothers had descended the Shortly before 7 o'clock there was a | Little Nannie exclaimed frantically: "Oh, it was David Nicely, as did McCracken, mountain, and before they reached Jenner-

town, where the Johnstown pike, on which Umberger lived, crosses the Philadelphia nike, they, according to the theory of the Commonwealth, struck off from the high road, and pushing on through a thicklywooded hollow, emerged in the rear of the Umberger house.

of his victim, and thus furnish evidence against himself, without any possibility of recompense to pay for the risk. Again, they argued and proved, he had ample time and opportunity to get rid of the pocketbook, while he was kept under arrest all night at Umberger house.

Links in the Chain of Evidence. At the trial the Commonwealth produced pocketbook, said to be the one sent by David to his wife after his arrest, and identified it as one of the pocketbooks stolen from hed it as one of the pocketbooks stolen from Farmer Umberger. A common red and white spotted handkerchief found in David Nicely's pocket was identified by Ella Stern, Umberger's domestic, as having been worn around the face of the larger of the two men, and his overcoat was identified by the little granddaughter by reason of a patch on it. It was also proven that the smaller man wore a brown derby hat with a hole in the brim. Such a hat was produced as having brim. Such a hat was produced as having been found in Joseph Nicely's house. Other testimony was taken to show that wo men were tracked over the mountain to two men were tracked over the mountain to within a mile of the Umberger farm, by their footprints in the snow. One man was wearing gum boots and the other leather boots. Both leather and gum boots were found at each of the Nicely houses. The trail was not taken up until the day after the murder, the tracks were not measured to

see if they conformed to the size and shape of the boots worn by the Nicelys, and the defense proved that a number of persons had crossed the mountain after the murder and before the trail was taken. A pair of com-mon overalls, found in David's house, were also produced as a link in the chain, the taller of Umberger's assailants having worn

PROVING AN ALIBI.

A STRONG LINE OF DEFENSE FOR THE NICELY BROTHERS.

Many Witnesses Who Swear That Joseph and David Were 15 Miles Away When the Murder Happened-David Incapaci tated by Heart Disease.

The defense set up by the counsel for the Nicely boys was an alibi, and, especially in the case of Joseph, they set up one which seemed almost unassailable.

The defense started at noon on the day of load of coal to Joseph's house between 12 to the fence and closed the bars. Ross fixed the date by his delivery book. Aaron Marks, a neighbor, said Joe was at his house about 4 o'clock that afternoon, arranging to paint Mark's house if the latter would help him build a fish pond. John Koontz swore he saw Joseph leaving Mark's house son, Lorenzo, united in testifying that Joseph was home between 5 and 6 o'clock; that he fed his cattle and, supper not being mile away, to arrange for hauling some

An Important Witness for the Defense. Perhaps the most important witness in fixing Joseph's absence from the scene of the crime was David A. Geeting. He worked in a sawmill, and was on his way home between 6 and 7 o'clock, after putting in 101/4 hours' work, as shown by his time book. He was carrying his cant-hook, which he had broken, when he met Joseph on his way to his father's house. It was just at this time that the Umberger murder was oc curring 15 miles away, the only way of reaching the scene being over the mountain road. Geeting talked to Joseph for a min-

ute or two and then went on. They wet again the next morning at the blacksmith shop, where Geeting was having | have only to say I am not guilty. his cant-hook repaired, which fact was impressed upon the witness' memory because by his time book. John Barron, the black smith, also fixed the date of repairing the cant-hook and seeing Joseph at his fo the day after the murder. Barron's testimony was corroborated by his day book showing what work he did each day.

Joseph Ate Supper at the Homestead. The father and mother of the boys, and their two sisters, Hettie Nicely and Mrs. Ella Menoher, were positive that Joseph ate supper at the house that evening, and that h and his father discussed the pro posed hauling of wheat the next day, which was deferred on account of bad weather. Then the David alibi was taken up, and Mrs. Sarah Barron, a near neighbor, said that David came to her house for butter beween 2 and 3 o'clock in the afternoon. She could not supply him, but promised to let him have some the next day, Thursday, which was her regular churning day. David com-plained of being unwell, and started for his home, in an opposite direction to the mountain. David and his wife swore that he was at home all that afternoon and evening, and were corroborated by Davis Payne and Hettie Nicely, who visited the house that evening and talked to David. All the witnesses for the Nicely fixed the date as Wednesday, because on that evening

the regular weekly prayer meeting was held at Mt. Zion Church, which was generally attended by the people living in the neigh-Physically Incapable of the Crime.

The defense after proving, from its stand point, an alibi for both the defendants, pro-ceeded to strengthen their case by evidence to show that David Nicely was physically incapable of walking 30 miles the greater part of the way over a mountain, and all the way over had roads made worse by snow and The Nicelys' family physician had died

shortly after the arrest of the boys, so the defense called Dr. Brubaker, who had been treating David in jail. The physician said that David was suffering from pertrophy or vergrowth of the heart an organic disease f some standing. In repose the prisoner' heartbeats were 10 or 12 a minute above the normal, and incapacitated him from severe physical exercise. In answer to a question as to the effect of walking upon the pris-oner, Dr. Brubaker replied: "He would be liable to sudden death under long-continued exercise. The natural beat of his heart now is 84 to the minute. When a man walks rapidly every second the pulse of the heart is increased and the heart becomes engorged by the outgoing of the blood and may choke, it may lose the power of contracting, and so cause death. A Fast Walk Would Be Fatal.

"David Nicely may have a pulse, say of 80 under rapid walking, and suddenly the pulse may fall to 80 a minute, and then would certainly die from loss of power in the heart. It would be possible for him in his condition to walk 14 or 15 miles, but he would have to walk very slowly and delib-

The Vancers, who identified the two men climbing the mountain as the Nicelys, said that the men were walking fast.

The defense then took up the identifica-ion of David Nicely's pocketbook, handkerchief, coat and overalls, and Joseph Nicely's hat. They produced witnesses who swore that the pocketbook produced in court was not the one sent by David to his wife or the one taken by the officers from his house, thus interring that Umberger's pocketbook had been substituted for the one received from Mrs. Nicely. The witnesses for the prosecution denied this and insisted that it had been kept in the safe of a Pittsburg detective agency from the time it was received until the trial.

Serious Instructions by the Defense, The defense argued that no murderer would be idiotic enough to throw away his own pocketbook, which was a good one, and substitute therefor the inferior pocketbook

Right in the same line was the evidence produced to offset the production of the derby hat, which Mrs. Umberger identified by a hole in the brim, as having been worn by the smaller of her husband's two assail-ants. The defense did not deny that the hat in court belonged to Joseph, but produced witnesses who swore most positively that there was no hole in the brim when the hat was taken from Joseph's house a week or more after the murder. Evidence was given to show that the patch on David's coat, which led to its identification by little Nannie Umberger, was not sewn on until after the murder. The handkerchief and overalls were of such a common pattern, that the de-tense held that it would be impossible to

#### SENTENCED TO DEATH.

BOTH MEN CONVICTED OF MURDER IN THE FIRST DEGREE.

New Trial—The Influence of Popular Sentiment—Every Avenue of Escape Closed and the Execution Fixed-A Repentant Juror. The jury in the case retired on June 7 to find a verdict. Judge Baer, in his charge to the jurors, impressed upon them the

Clamor in Court Causes an Appeal for a

enormity of the offense with which the prisoners were charged, rapidly reviewed the testimony, leaving to the jury the task of reconciling it, or of selecting that side which eemed to them the most reasonable. He further instructed them that if they found the prisoners guilty, it must be murder in the first or second degree.

The jury was out all night and returned

verdict of guilty. The verdict did not specify of what the prisoners had been found guilty, and they were ordered to remedy the defect, which they did in a few moments by returning a verdict of murder in the first degree against both prisoners. The verdict the murder. Gilbert Ross said he hauled a was a popular one, and was enthusiastically indorsed by large crowds which had gathand 1 P. M., and Joseph followed him out | ered from all parts of the county to hear the

result of the trial. The prisoners' counsel at once made a motion for a new trial, alleging that the jury had been influenced, if not overawed, by the turbulence of the audience during the trial, and proving that remarks calculated to intimidate or unfavorably influence that afternoon. Joseph, his wife and his the jurors were let fall in their hearing while going to and fro for meals. Tipstaff Huston, who had charge of the jury, testified to these facts and to overhearing one of ready, started for his father's house, half a the jurors say while considering their verdict: "If we don't convict these men of murder in the first degree the citizens will mob us."

New evidence had also been discovered which would strengthen the alibi, and an affidavit was produced from Dr. G. B. Anderson, who had treated David Nicely a year before for heart disease, in which he stated that it would have been physically impossible for David to have made the long tramp of 28 or 30 miles over the mountain and back again on the day of the murder.

To Be Hanged by the Neck. The counsel for the defense raised some other points in their motion, but on August 19 a new trial was refused and the prisoners called up for sentence.

When asked if they had anything to say before sentence was passed upon them, the brothers arose in turn and simply said: "I

The prisoners were sentenced to be hanged by the neck until dead that they might ex-plate the murder of Farmer Umberger, of which they were convicted, and were re-

turned to jail. The good people of Somerset county were satisfied. Rampant crime had been seriously discouraged at that term of court, for four of the McClellandtown gang had also been sentenced to the penitentiary to serve long terms. The Somerset county farmer felt that now he could retire at night in perfect safety without fearing the possibility of awakening in another world where agricult-

ure is not practiced. A Repentant Juror's Letter.

The defense did not give up, but prepared to appeal to the Supreme Court. The counsel felt encouraged by the following letter from one of the jurors, which was received on the day of sentence:
FAIR HOPE, August 17, 1889.

General W. H. Koonts: DEAR SIR-I drop you a few lines as regards the Nicely case. I have been thinking a great deal about it and am not satisfied. It has been bearing on my mind ever since: it was not my will that it was decided that way. I was sick and hurt; the evidence was not sufficient to convince me of their guilt, and I would have convince me that infyroom until now if I had not been overpowered by men and sickness. Will you favor me by going to the Nicelys and telling them that I do not want them to

and telling them that I do not want them to have any hard feelings toward me; that I tried to do my duty and could not. Now, Mr. Koonts, let me know what they say.

I can see those men's faces before me every night, and I do not like that. Please answer soon.

J. W. BECK. The appeal to the Supreme Court was fruitless, as were two hearings before the

Pardon Board, and one of Governor Beaver's last official acts was to fix the execution for April 2.

SEEKING FRESH CLEWS.

THE VERY REMARKABLE CONFESSION OF JOHN BEACH.

Corroborative Testimony Produced-Result of a Mother's Sadness-The Phrenologist and His Mysterious Visitor-A Stranger Who Knew All About the Murder.

The counsel for the Nicelys were confident of the innocence of their clients, and believed them to be the victims of a popula clamor for blood. They arrived at the conclusion that in order to prove their clients guiltless it was necessary to find the actual criminals, something that is not expected from counsel for the defense under the Constitution, which holds every man innocent until the Commonwealth proves beyond doubt that he is guilty.

Inquiries were made in the neighborhood of the Umberger farm, and there it was learned that a week or two before the murder a traveling phrenologist had been doing a good business in the community, and besider getting acquainted with the bumps on the farmers' craniums, had probably learned something about their households, customs and probable wealth. This man would stop over night at a farmhouse, and being a good talker, was a welcome guest. The Phrenologist and the Stranger.

A Mrs. Beale entertained the phrenologist for several days, but had forgotten the name he gave. Two days before the Umberger murder, a stranger called at her house and inquired for the phrenologist. They both went into the parlor, and when Mrs. Beale came into the room again the men were sitting side by side on the lounge and talking in whispers. The stranger left shortly, and the next day the phrenologist went away, to return on the Friday after the murder, for which date he had a proThe phrenologist has not been seen in that neighborhood since.

About 8 o'clock on the second morning after the murder a man descended the mountainside at New Florence, apparently from the direction of Jennertown. His clothing and appearance tallied generally with that of the smaller man concerned in the Umberger murder, but the people he met paid no particular attention to that, as they were too deely interested in the news he brought. He stopped to listen to James L. Hare and his companions who were piling ties and talking about a young man who was killed on the railroad the day before.

Knew All About the Murder. "Are you talking about the Umberger murder?" asked the stranger. "No," was the reply. "What do you mean?"
"Didn't you hear of the Umberger mur-

Dian't you hear of the Umberger mur-der yet?" was the interrogative reply. Hare knew the Umbergers, and was inter-ested, so the stranger told him all about it, and then went on to say that the people of Jennertown didn't know how to conduct an inquest, and he had to take charge of affairs and show them how to do it properly. He further told Hare that he was going to Johnstown, where he had a number of stonemasous at work. Then he went down to the railroad, and instead of waiting for a passenger that which would be done in a passenger train, which would be due in a few minutes, jumped on a freight and rode

out of sight. out of sight.

Inquiry was then made among those persons who attended the inquest, but no one remembered seeing such a man, and all were confident that they would not have forgotten him if he had acted as master of ceremonics. The stranger had obtained his information elsewhere, and had been first with the news at New Florence.

John Beach's Remarkable Confession. No clew could be found to the phrenolo-gist, his friend or the New Florence strangist, his friend or the New Florence stran-ger, and the attorneys were giving up this trail in despair, when, in June last, General Coffroth, one of the Nicely's counsel, was staggered to find in his mail a confession of the Umberger murder, signed by John Beach and duly attested by E. P. King, Justice of the Peace, in Middlecreek town-his. The confessor was hells written and ship. The confession was badly written and poorly spelled, and read as follows:

poorly spelled, and read as follows;
In connection with my confession I will say that I started East in the tail of 1879 from Gaylord, Kan., in company with four other men. We expressed our valies to Scottdale, Westmoreland county, Pa., and started after to beat our way through. We all went together as far as Achison, Kan. There two of them left the crowd and the other two and I went together to Kansas City. One of their names was William Burkholder, a nd the other Sipe. I forget the other men's names. They were all from Westmoreland county sand well acquainted with each other. When we got to Kansas City I was to get a boat, and we were all to go down the river as far as the mouth of the Missouri. I left Burkholder and Sipe at a cortain place in the evening until I would get the boat. I got caught in getting the boat and was locked up for 90 days and could not meet my partners.

Beach Assumes Another Name.

Beach Assumes Another Name, Here I changed my name, and have kept my new name ever since, for I did not want my eal name in the papers, or that John Beach was caught stealing a boat. I stayed in Kansas City till the next June, and then started on a steamboat East after my partners. 1 got as far as St. Louis, stayed there till the next summer and then started East. I got as far as Cincinnati, O.; stayed there about six months. My next move was to Pittsburg, and from there I got on a freight train to stop at Greensburg, but it did not stop till it got to Johnstown. Here was plenty of work of all kinds, and I liked the place and gave up hunting for Burkholder and

place and gave up hunting for Burkholder and slipe.

After I was there about four or five months I got acquainted with a man by the name of Miller. He worked about town, did odd jobs, dug cellars, cleaned wells, and did errands for boarding house men. After I was acquainted with Miller some time we started West again to Michigan. Were in Detroit and other different places; from there to Wheeling. W. Va.; from there we went to Cumberland. From there we started through the country to Johnstown, and on our way met with one of Miller's old chums. He was a book agent, and "looking out for something," as he called it, and said he had some good ones spotted in Somerset county. He gave us the names of several farmers. One was Bernard Miller, near Garrett, and Umberger, near Jennertown, and others.

Umberger Killed in a Scuffle. several meetings and about a year's time we concluded on Umberger. Miller and I went in, while the book agent and his men stayed out side. When we got the money there was a big scuffle. Miller shot three or four times with his revolver. Mine was a 22-callber, seven-shot. I lost my big revolver when I shipped my value East with Burkholder and Sipe. There was no

East with Burkholder and Sipe. There was no need of the shooting.

When we got out of the house we all started for Latrobe. We all went together for several miles, till we came to the forks of a road. Here we divided the money and threw one pocket-book away, and parted, Miller and I taking one road and the others another way. We kept the other pockethook until we got to a small the other pocketbook until we got to a small stream, and threw it in. We then went to the railroad. We ate our lunch, hid our money, and appointed a place to meet at and begged our way. After the Nicely boys were arrested our way. After the Nicely boys were arrested, we went and got our money, and I started West to Kansas City and Miller went to Cumberland. I got several letters from Miller while he was in Cumberland. In his last letter he said the Nicelys were in jail yet, and he was going back to Johnstown to rent a billiard hall and go into business. In about a week I heard of the Johnstown flood, and I never heard any more of Miller, so I came East to look for him. I suppose he was lost in the ook for him. I suppose he was lost in the

Haunted by a Mother's Face.

On the train I heard a stranger say, "The lady in black is the mother of the Nicely boys." I looked at her. She had the saddest face ever saw. I can never forget that sad look until my last hour. I can always see it before my eyes. I have put off this statement as long as I could with her looks before my face, and the trouble of the Nocely family, with two boys in jail waiting to be hanged innocent. If they can find Buck bolder and Sipe they will tell you my intentions of coming East. JOHN BEACH. of coming East.

I ask the Justice of the Peace to take a copy of this and send it to the Nicely family and

keep a copy of it. Justice King says he was lying on his lounge on Sunday evening, June 8, 1890, when a stranger walked in and wanted to be sworn to a paper. The 'Squire told him Sunday was not a day for business, but he might stay all night and take the oath in the morning. The man persisted, saying it didn't amount to much anyway. It was getting dark and the Squire walked out onto the porch, and asked him it he knew the contents of the the 'Squire swore him in the usual form.

Carried a Big Roll of Money. The stranger pulled out a big pocketbook full of money, the 'Squire estimating that there was at least \$1,000 in it. He selected a \$5 bill and asked the Justice to change it. but the latter could not, and the stranger gave him a quarter.

The man took the document he had sworn

to, wrapped it in a newspaper and tied a string around. At first he acted as if he were going to put it in his pocket and afterward in his valise, but finally he handed it to the Squire, saying, "I am going to see a friend to-night; won't you keep it till morning for me; it is useless for me to carry it along with us. I will be back this way in the morning and will get it." The Justice took the paper, locked it in his desk and the man walked away, never

returning for the paper. Several days later the 'Squire examined it, and when he dis covered what it was, forwarded it to the prisoners' counsel, not knowing the address the Nicely family. William Burkholder, Amos Sipe and James D. Mountain, three of the men with John Beach on his Western tour, were found

and corroborated the conjession so far as the details of that trip were concerned. Identified by an Old Photograph. Burkholder had a photograph of Beach King recognized as bearing a remarkable resemblance to the man he qualified on that Sunday evening in June. Beach was a tall man, with thick whiskers and beard

heavily tinged with gray.

Mountain, in his statement, said he had

who warned him if he gave any testimony in this matter favorable to the Nicelys that he would become unpopular, and that there would be money in it if he dodged the serv-

ice of the subpons. The country has been scoured for months to find a trace of the man who swore to the confession at Justice King's office, but until the last few days no clew had been found. Now, however, it is believed that Beach has been located, and it is only a question of a few days until he will be confronted with the confession purporting to be written by him. It is chiefly for the purpose of securing time to find this man that Governor Pattison will be asked this week to grant an extension of the time fixed for the execu-

#### BREAKS FOR LIBERTY.

THE ATTEMPTS TO ESCAPE MADE BY THE NICELY BOYS.

The Turnkey Shot and Overpowered-A Very Brief Season of Freedom-Threats of Lynching-Breaking Through the Wall-The Wounded Fugitives Captured Again.

The efforts of the counsel for the Nicelys to obtain a commutation of sentence from the Pardon Board were sadly handicapped and probably frustrated by the attempts of the prisoners to escape. Twice the condemned men broke out of fail; once they were discovered while at work on the inside, and only a few days ago they were found in possession of an assortment of very fine files.

The first attempt to get away was made in the summer of 1889, by breaking through the wall of the jail, but was discovered before much headway was made. The men were then kept confined in cells, having the freedom of the corridor at meal times.

In September, 1889, a Pittsburger named Lehr was placed in jail to await trial for participation in a cutting affray. He and the Nicelys became good friends and planned an escape. In this they were undoubtedly aided by friends on the outside, who succeeded in furnishing them with revolvers and tools.

Shot the Turnkey and Escaped. At noon on September 16 Milton R. Me-Millan, the turnkey, brought in the prisoners' dinners, and let them out of their cells into the corridor that they might eat with some degree of comfort. The prisoners were no sooner out of their cells than Lehr covered the turnkey with a revolver, expecting to bluff him into giving up the keys. McMillan didn't see it that way, and David Nicely sprang at him and struggled with him for the possession of the keys. Joseph went to David's assistance, and in the scuffle shot McMillan twice in the left side. The friends of the Nicelys says this shooting was not part of the programme, as the prisoners expected that the mere exhibition of the revolvers would be sufficient to over-

awe McMillan. The turnkey was left in the jail severely wounded; the prisoners took the keys, un-locked the jail doors, and the Nicelys broke for a strip of woodland about a mile away. It was but a few minutes until the town was aroused, and hundreds of citizens turned

out to pursue the fugitives. Captured in the Woods,

The Nicelys had been seen entering the woods, which were at once surrounded, while men went through to best up the while men went through to beat up the human game. It was not long until David was found perched up among the foliage of a high tree. A couple of rifles were pointed at him, and it was suggested that he come down. He came. Half an hour later Joseph was discovered under a thick pile of brush. He was dragged out and both prisoners were conducted back to the jail from which they had escaped less than two hours before.

The news of the attack upon the turnker and the escape of the prisoners spread rapidly, and the party having the Nicelys charge were met on their way back to the jail by an infurnated mob who wanted to lyach the prisoners then and there. The Sheriff was on hand and called upon several of the citizens to aid in protecting the Nicelys, and after much difficulty succeeded in getting them back into jail.

Turnkey McMillan recovered, although his life was despuired of for some days, and now he is a member of the deathwatch which has charge of the Nicelys until the day of the execution

Broke Through the Jall Wall. It was over a year before the Nicelys evening of November 29, 1890, the combination at the end of the corridor which locks the cells was left unfastened. The Nicelys and another prisoner named Queen, arrested for some trifling offense, walked around into another corridor, climbed up through a trap door into a garret, and there broke through the brick wall, 30 feet above the ground. They had a rope, and Joe descended first, but fell several feet and broke his ankle. David followed, and was also injured, while Queen fell the whole distance and broke his leg in two places. His groans attracted at-

cape.
Several posses were organized to scour the country. The County Commissioners offered reward for the capture of the fugitives, which was increased by a subscription raised by the citizens. All night the search continued and all the next day, but no trace of the Nicelys could be found. The citizens arrived at the conclusion that the nen had reached the mountains, with which they were well acquainted, and where a thousand men could not find them unless by

accident. Farmer Fenner, who lives about a mile away from the jail, went to his barn to feed his stock on the evening of the second day after the escape, and heard a noise in his havloft. He investigated, and there found David Nicely, with a eg and an arm paper. The man replied that he did, as he broken, and suffering ir ensely from his in-had written it and signed it himself. Then juries. David was well armed, but too weak and discouraged to attempt resistance. He was taken back to jail, and the news of his capture encouraged the citizens to persist in

their search for Joseph. The next evening Farmer Barelay found Joseph in his barn. The latter had traveled a mile further than his brother, but the pain of, his broken ankle had proven too much for him. He had crawled into the barn, and had been unable to move. When he was found his feet were badly frozen. Joseph was taken back to jail, and from that time they have been vigilantly guarded

### NICELY BOYS TALK.

THEY TRIED TO ESCAPE BECAUSE THEY WERE INNOCENT.

Determined Not to Suffer From the Mistakes of Court and Jury-Confident That the Criminals Will Yet Be Found-Preparations for the Execution. "Why did we try to escape? Why should

we stay here when we were innocent?" said Joseph Nicely to THE DISPATCH man, when interviewed in his cell in the Somerset

The Nicely boys occupy adjoining cells in the second story of the little jail, which stands by itself between the Court House and the Sheriff's residence. The jail is of brick, sheathed inside with 1ron, with a fessional engagement at a neighboring farm. been approached by a well-dressed stranger | plentiful supply of heavily grated doors.