The Nittsburgh Gazette.

BUTLER HOMICIDE TRIAL. Judge McGumn's Charge.

Gentlemen of the Jury: Your attention, gentlemen, for the past week, been occupied in listening to the evidence in this important cause, with painful interest, and I congratulate you that it is so near its close.

It is not often that a citizen, in that duty which he owes to his country, is called upon to act as jurer in so responsible and unfortunate kind of case which has devolved upon you. It may be you may never be called upon again during your lives to pronounce a verdict involving the fate for life or death of a fellow being. It is a fearful responsibility, but ene from which you should not shrink, to exercise the power, and to declare that one of your citizens has forfeited his right to live-or to enjoy that freedom and liberty common to all law abiding citizens. The eath you have taken demands of The cath you have taken demands of you the rendition of the verdict according to the evidence, even though the effect thereof would deprive the accused feet thereof would deprive the accused of his life. And I desire to say to you, that you should meet that responsibility in such a way as that a peaceful conscience may forever after be with you for the faithful discharge of your duty.

Much difference of opinion may exist in the minds of the community as to the wisdom of the law in reference to the punishment of the higher offences, but with that now neither you nor the Court with that now neither you not the court have anything to do. The interest of somety, the welfare and protection of the people, depend upon the full and prompt administration of the laws, as they exist when Courts and juries are called upon to discharge the duties devolving upon them. The responsibilities arising from the

consequence of the verdict rest, not upon us, but upon the framers of the laws. Our duty is to administer the law as we find it written upon the statute book.

I now call your attention to questions which demand your anxious consideration, and to the leading and prominent points in the evidence, and to the principles of the principles of the principles of the principles. ples of law which may arise upon the points submitted to us for our answers. It is sometimes difficult to determine It is sometimes difficult to determine how and by what means death is brought about. In this case the manner is not doubtful, if the evidence is believed. That it was produced by a gun or pistol shot will not be contested, as the report of which was distinctly heard by the witness, and the contents of the weapon were found in the head of the deceased which terminated her earthly arwespon were found in the nead of the de-ceased, which terminated her earthly ex-istence. The more important fact must be shown—that is, you must be satisfied that it was the act of the prisoner at the bar that brought about the result, and what was the design of the act which resulted in her death, and the facts must be es-tablished to your satisfaction beyond a reasonable doubt.

On the night of the 3d of October, On the night of the 3d of October, 1868, in the township of Franklin, in this county, at the house of her father, Geo. McCandless, while sitting at the table with her parents, suster and friend, some time after dark, eating her supper, Miss Nancy Ann McCandless was shot with neck, which resulted in her death. Her friends around her heard the report of the fire arm, and saw her lifeless body fall to the floor, unconscious and unable to know what brought about her untimely end. The evidence clearly establishes that the weapon was fired from the outside of the house by a person whom the witness supposes had secreted him; self, in the darkness of the night, near a bush which stood a few feet from the window, behind which, it is supposed, he was shaded from the light from the window until he executed his terrible purpose.

The window glass was perforated by

he happened to be there at meal time.

The Commonwealth contends that being in the immediate neighborhood he

This is the destinction between the had the opportunity, it he desired to commit the deed; that he was the owner of fire arms, of a gua and platol, some of the offices of the offices of the offices of which he was in the habit of carrying with him, and that he was well acquainted with the use of them; that haying been well acquainted with the property of the produce of the fact of offices he is guilty, what is committed the act, are to determine of which and internal arrangements, and frequently the product of the fatal occurrence he left the houng of the fatal in a favorable position, did not return until a short time after the people of the fatally; that during the time he was proving about the premises of Mr. Candless, awaiting a proper of portunity to accomplish his purpose, and finding the family sitting at the proper of portunity to accomplish his purpose, and finding the family sitting at the propers of had the opportunity, if he desired, to commit the deed; that he was the owner

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The Commonwealth have further put in evidence other alleged declarations of the defendant to witnesses, tending to prove the same purpose and intent on the part of the defendant, which is offered to prove malice towards the deceased, and to establish the intention of defendant in committing the act, and show his identity in the performance thereof identity in the performance thereof.

identity in the performance thereof.

The Commonwealth put in evidence other acts of a circumstantial character, of which I shall more fully speak of hereafter, tending, it is alleged, to prove the defendant as the person who fired the deadly weapon, and that such acts were malicious toward the deceased and other members of her family.

On the part of the defendant it is contended that he left the premises of Mr. Graham on the evening of the 3d of October, to go to the Baptist church; that he was seen to start, and that he had no

was seen to start, and that he had no deadly weapon in his possession; that he went there and came home about the went there and came home about the time of the return of the grand-children of Mr. Graham; that he assisted to put away the horses in the barn, and came back into the house, ate a piece with the other persons before going to bed; that he went to his bed as usual, having some of the grand-children in bed with him, including William English, the witness whose testimony has been read before you, and that his first knowledge of the deed being done was that communicated to him by Mr. Graham during the night, arousing him from sleep and desiring arousing him from sleep and desiring him to go over to Mr. McCandless' and render such aid or assistance as was necessary under their affliction; that he did so, borrowed a horse from Mr. Graham, went out into the neighborhood and gave the alarm that a homicide had been committed, and returned to Mr. Graham's before daylight and went

I have now spoken of some of the alle-I have now spoken of some of the allegations and positions of the parties growing out of the facis before you, and will proceed to call your attention to the principles of law applicable to the charge laid in the bill of indictment, and to charge you upon such points as have been submitted to us by defendant's counsel, with the answers thereto, and upon the rules of law in reference for the character of of law in reference to the character of circumstantial evidence.

circumstantial evidence.

Murder at common law is the wilfully killing of any reasonable creature or being in the peace of the Commonwealth, with malice aforethought, either expressed or implied. This definition is adopted in this State, and we have an act of Assembly, of 1794, which was reenacted in 1880. [Reads the statute.]

You will observe, gentlemen, it is not pretended by the Commonwealth that the offence charged by her against the defendant comes within the first branch of some deadly weapon, the contents of the act, as no attempt has been made to which penetrated her head, face and show the defendant committed the neck, which resulted in her death. Her offence whilst in the act of committing

was shaded from the light from the window until he executed his terrible purpose.

The window glass was perforated by
the missile of death, making a hole perhaps two inches in extent, and what was
not received in her body, entered the
door beyond where she had sat. A portion of the wad was found on the floor,
within a short distance from where she
lay, and a post mortem examination
resulted in the belief that her death was
brought about by gun or pistol; and the
wound upon her body, the surgeons say,
was sufficient to produce death.

And during the trial of the cause we
have received much testimony from the
namerous witnesses, showing the
theory of the Commonwealth as well as
abortited to you for your consideration.

From the evidence it appears that at
the time of this cocurrence the defendant
ant was living with Daniel Graham, Esq.,
within a mile and a half of the father of
the decassed; that he had been there for
a period of two years, working upon
the farm, from day to day, doing those
matters usually transacted by hired persons; that he was treated by fired persons; that he was treated by milliarticisn
which he lived; that prior thereto hehad
lived in the family of Mr. McCandless,
for some time; that he was a relative of
Mrs. McCandless, being the son of her
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only.

This is the distinction between the grades of the offence of murder as defined and laid down to us under our act of Assembly. And the jury, if they find from the evidence the defendant

what the boy had said about it, had not seen Hackenberry, and it is contended that if he had been in the church at all that night these witnesses must have seen him.

The Commonwealth further contends that the defendant had, in consequence of his intimacy and intercourse in the family of dir. McCandless, become enamored of deceased, Miss McCandless, who, it is alleged, did not favor his addresses; that he wrote letters to her, which she received and would not reply to; that these letters contained threats to take her life; if he could not possess her himself he would deprive any other of their expectations; and that the fatal deed was perpetrated to prevent any other-person from enjoying her as a companion for life, act, and anything which will show a preconcerted plan to do the deceased bodily in his part of the defendant, which is offered to prove malice towards the deceased, and the evidence to show it must be made to prove malice towards the deceased, and the evidence to show it must be made up circumstantially. Any facts, which go to support an inference of its exist.

up circumstantially. Any facts, which go to support an inference of its existgo to support an inference of its exist-ence, are admissible. Hence we received evidence of the alleged act of shooting in the house of Mr. McCandless, on a certain night spoken of by the witness; also, the occurrence, at the same place,

oner; and when the proof is circumstantial, and there be no doubt about the cir-

and circumstances of each case. It has been said "there is no motive which to the mind of an honest man can be adequate to the commission of crime, and just in proportion as the mind is debased and immoral, to that extent the motive may be less which induces the criminal act. Hence there can be no one rule for all cases, as regards adequate of matter.

ust be satisfied that they point to guilt, it will be your duty to pronounce nis guilt beyond reasonable doubt. 4th. If there be any reasonable doubt as to the reality of the connection of the circumstances of evidence with the fac

circumstances of evidence with the jac-tum probandum, or as to the proper con-clusion to be drawn from the evidence, the jury should acquit. It is better that ninety-nine guilty persons escape than one innocent person suffer. We answer this point in the affirmative. 5th. If upon the whole evidence the jury has a reasonable doubt of the certainty of any material fact, or the proper conclusion to be drawn from the evidence than the conclusion to be drawn from the evidence than the conditions of the conclusion to be drawn from the evidence than the conditions of t

dence, they should acquit.

We answer this, and say to the jury, that the presumption of law is that every man is presumed to be innocent until Le is proved to be guilty, and therefore if you have, upon the whole evidence in the case. nave, upon the whole evidence in the case, or upon any material fact in evidence, on coming to your conclusions, a reasonable doubt in your minds as to his guilt, you must acquit.

6th. If the Commonwealth has not, be-

6th. If the Commonwealth has not, beyond a reasonable doubt, proved the truth of all the material facts and allegations, and the guilt of the prisoner beyond a reasonable doubt, he is entitled to the benefit of the doubt on all material matters, and should be acquitted.

We have answered this point substantially in our answer on the 6th point.

7th. That the case is of purely circumstantial evidence, and unless every material circumstance necessary absolutely toconnect the prisoner with the commission of the crime has been proved beyond

sion of the crime has been proved beyond a reasonable doubt, he should be acquit-Answer—There being no proof before Answer—There being no proof before the jury by any witness who saw the person who may have fired the gun or pistol which produced the death of Miss Nancy Ann McCandlezs, the Common-wealth relies upon circumstantial evidence to make out a conviction of the prisoner. We have already said to read

saiding — 4, page 268.] **Circum-; stantial sydence in a capital case is in the abstract nearly, though parhaps not altogether, as strong as positive sydence; in the concrete it may be infinitely stronger. A fact positively swern to, is not so satisfactory proved as a fact which is the necessary consequence of a chain of other facts, sworn to by many of doubtful credibility. Indeed, I scarcely know whether there is such a thing as evidence positive." He further adds: "The only difference between positive and circumstantial evidence is, that the former is more immediate, and has fewer links in the chain of connection between former is more immediate, and has fewer links in the chain of connection between the promises and conclusion. All evidence is more or less circumstantial, the difference being only in the degree, and it is sufficient for the purpose when it excludes disbelief, that is, actual and not technical disbelief, for he who is to pass upon the question is not at liberty to disbelieve as a juror while he believes as a man. It is enough that his conscience is clear.

clear. "When circumstances are proved by "When circumstances are proved by many witnesses, tending to the same point, or when circumstances are shown beyond all doubt which lead necessarily, to one conclusion, and are irreconcilable; with any other, they may be more satisfactory to a jury than direct or positive testimony."

We know in the trial of cases in Courts of Institute there is a possibility that were

certain night spoken of by the witness; also, the occurrence, at the same place, on the Sabbath day; also, the reception of proof in reference to the contents of the letters, alleged to have been received by deceased, as an effort to identify the defendant with these matters, and to show his feelings toward deceased, the motive for doing the sot charged.

Much has been said in the discussion of the facts before you on the motive which would operate upon the mind of the defendant to induce him to commit the offence charged in this case. Your own common sense will be called on to aid you in determining this fact. If you are satisfied from the evidence that defendant did the act, there is no doubt a motive for it. This you would infer from the act itself. When murder is charged, and the evidence to support it is circumstantial, it is always a matter proper for the jury to look at, the motive of the prisoner; and when the proof is circumstantial, and there be no doubt about the circumstantial, it has been swonn by a number of witnesses that up to the time of the offendant, it has been swonn by a number of witnesses that up to the time of the offendant to look at, the motive of the prisoner; and when the proof is circumstantial. As to the good character of the defen-dant, it has been sworn by a number of witnesses that up to the time of the of-

tial, and there be no doubt about the circumstances, it becomes very important to examine into the motive. If, however, the evidence of murder shows design, and it be direct and positive, then the guilt is established without looking for a motive.

But all depends upon the peculiar character of the accused, and of the facts and circumstances of each case. It has been said "there is no motive which to state of the consequence what be said and consequence what the said "there is no motive which to state of the consequence what be said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of no consequence what said "there is no motive which to state of the sustained a good character as a peaceable and orderly citizen. In cases

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STREET. 87. his character had been. You will remember what the witnesses have said in their testimony in chief and on cross-examination, and if you have a doubt in your minds you will give the defen-dant the benefit of all the evidence

may be less which induces the commonstrate of the person accused in each case. The worse it is, the less the motive which led to the commission of the crime.

At this point His Honor took up and answered the following law points submitted by prisoner's counsel.

It must depend on the moral character of the character. In a case of reasonable doubt as to the guilt of the accused, evidence of previous good character is conclusive in his favor. And now, gentlemen, I have noticed and called your attention to the principal points in the case. I have not brought in review before you the evidence in full, because it has been so fully and ably presented to you and thoroughly scanned by the learned counsel concerned in the case; and then, no doubt, you remember it all, and it is within your recollection, and my duty is at an end, 2d. The burden is on the Commonwealth of clearly proving any and all facts which infer legal accountability.

We answer this point in the affirmative careful consideration. Thave endeavored to do my duty unswervingly as I understood its in this case.

3d. In order to justify the inference of guilt from circumstantial evidence, the existence of inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other hypothesis that that of guilt.

We answer this point in the affirmative.

Tremember it all, and it is within your recollection, and my duty is at an end, and the case submitted to you for your careful consideration. Thave endeavored to do my duty unswervingly as I understood it. Do yours conscientionsly, having a regard for the obligations taken upony out. This unfortunate man's destiny is now committed to your hands. The law allows him the benefit of every reasonable and well grounded doubt to avail for his acquittal. If upon the consideration of all the facts in the case no such doubt rests in your minds. explanation upon any other hypothesis than that of guilt.

We answer this point in the affirmative, and we say to you, the facts on which the Commonwealth relies for a conviction of the prisoner must be incapable of an explanation upon any other hypothises than his guilt, and the thereof, say you are not estigated.

verdict of not guitly. **GAS FIXTURES** WELDON & KELLY.

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