bridge I told them it was five miles; recognized two of the men as Lewis and Tasker; was about 50 steps from them; It was on Sunday, about 6 o'clock in the evening, April 14th.

Mitchell McClintock.—I live about three-fourths of a mile from the Casselman bridge; saw two men at my barn Sunday night, April 14th; they spoke to me and asked me the nearest way to the railroad; walked with them a short distance up the road when one of them caught me by the shoulders, I broke loose from him and they began cursing and swearing at me. Just then I observed another man coming along with a sack on his shoulder. Recognized two of the men as Tasker and Marshall Sullivan.

P. F. Hanna—Live in Addison about one-fourth mile south of Harnedsville on the road leading to Petersburg; on 15th last April saw Lewis and Tasker in my father's barn; they had two sacks and a demijohn; the sacks were filled with something which looked like it might be ham, chestnuts, or something of that kind; I had one of the sacks in my hands; I asked them to hand it to me; my father ordered them out of the barn, pointing a double-barreled shot-gun at them; said they had got there about 11 o'clock the night before.

Wm. Hanna—On the 15th of April last about 12 o'clock Lewis and Tasker were in my barn; they had two sacks and a demijohn, I ordered them out; they told me they went into the barn about 11 o'clock the night before; I was talking with my brother about the Yoder robbery; had just heard of it, and spoke of having driven two men out of my barn; just then two men came up the river road carrying a couple sacks; they were coming from the direction of Somerfield; I told them they would have to go back to Confluence; Walker and Flannigan came along just then; some little conversation took place; I asked them where they came from, but they did not give a very definite answer to that; they said they had originally come from Baltimore; I then asked them where they were going and they said they wanted to go to the neighborhood of Three Waters; that the were practical miners; I asked from what direction they came when they entered my barn; they said they had come from the South.

John Hanna—Live in Addison township, on the road leading from Confluence; on the 15th of April saw Lewis and Tasker about 2 o'clock in the afternoon, about 75 yards from my house, along the road going in the direction of Somerfield; I started after them and arrested them; we asked them to go with us to Confluence; we went out there to the forks of the road, where my brother left us; Augustine and the largest one got on to Augustine's wagon, and I took the other on the horse behind me; we went down about half way between my house and Confluence, where the prisoners succeeded in making their escape; the man with the blue necktie got out of Augustine's wagon and laid down to take a drink, and pretending to reach for a handkerchief, drew a revolver and ordered Augustine to get out of the wagon and over the fence, which he did; the man behind me on the horse had a struggle with me for the possession of my revolver, which he finally succeeded in procuring.

A BAD CASE OF HEART DISEASE.

Ross Augustine.—Saw Tasker and Lewis on the 15th of April between Wm. Hanna's and John Hanna's, between Confluence an Somerfield, on Monday following the robbery; they passed us and we followed and inquired as to where they came from and where they were going, and what they had in the sacks which they were carrying; talked to them 10 or 15 minutes; John Walker and Andrew Flanagan came along; Wm. Hanna left and went home; they complained about being very foot-sore, and I proposed taking one of them half way in my buggy and the other the other half; I took him in with me and shortly after looking back, saw that Mr. Hanna had taken the other on the horse behind him; my horse got to going pretty fast and I got quite a distance ahead before I knew it; on the way Lewis complained of being very sick and said he was troubled with heart disease; he looked and acted as though he was sick; we came to a spring and I permitted him to get out to take a drink of water; after taking a drink he suddenly drew a revolver on me and I then discovered that he was free of the heart disease and I was taken with a sudden attack myself; he demanded that I throw up my hands which I did without argument and also retreated gracefully over the fence upon his request.

John A. Walker,—Corroborated testimony of Messrs. John Hanna and Ross Augustine.

George D. Groff—Live in Confluence; saw the sacks on Monday evening at Augustine's; opened one of the sacks; the leister sack, which contained a demijohn, some sugar cakes, some sausage, hams and chestnuts. All contents were replaced and taken back to Augustine's house.

Joseph Umbersohn—Live in Fayette county, about three miles from Hill's; know Jereaunus Thomas; asked him about carrying provisions to Hill's; admitted that he had carried apples, eggs and meat to them. Went with Thomas, Anderson and Sheriff of Fayette county to the Hill house on night of 22nd of March and heard a whistle which he thought was given by Thomas.

Israel Hoover—Live in Black township on the Forge road; five or six miles from Mechanicsburg; saw four men going in direction of Elklick Saturday April 13th, about twenty rods apart; recognize Lewis as one of the men.

Wm. B. Cook—Live at Meyersdale, Grant Dean made a statement to me starting out by saying that he could prove his whereabouts on Saturday and Sunday nights; said that he staid all night on Wednesday April 24th, at the house of Abraham Thomas; on Thursday night April 25, at house of Marshall Sullivan; on Friday night 26th, with Abraham Thomas, on Saturday night 27th, with Abraham Thomas, on Sunday night, 28th, with Mrs. Sullivan; he then said that the crowd might think it was strange he knew these people, but he said his object was to arrest them; he also said that he had bought whiskey for these parties, on two different occasions, the first gallon for Marshall Sullivan; he said that he proposed using the whiskey for the purpose of making the arrest.

John Lentz.—Live in Elklick township; know Grant Dean; had a conversation with him about the robbery; he said he knew some of the parties and would take measures towards their arrest; we were talking about the matter in the family about this time and some one of the family inquired as to how he found this out; he said that he knew something of the parties, and would find something out one way or another; some one remarked that they would not tell him their secrets and he replied that he had kept secrets for them before; I think he knew the Sullivan boys; he left my house Wednesday morning and the next time I saw him was at Meyersdale after his arrest; have known him since July, 1880; left my house about 8 o'clock in the evening of April 13th, with my other hired hand, but am not positive as together.

Christian Livengood.—Live at Salisbury; know Grant Dean; had a conversation with him about the robbery; he told me names of what he called the McClellandtown gang; asked me if Peter Fischer and J. W. Beachy did not have a great deal of cash about them; told him I did not know; this conversation was on the 26th of March.

Ephraim Engle.—Know Grant Dean; had some conversation with him about the robbery; was talking to him on Easter Sunday; was talking and joking with him; he said he would sell me his pocket-book for $10; he then opened the book and I did not see anything in it; he then said I will sell it to you for $5, and opening it again showed me some bills and said "this is some of Yoder's money"; I saw a $20 and $10 bill but am not sure as to any more.

W. J. Fisher.—I Know Grant Dean; helped to arrest him at Joseph Savage's, in Fayette county, about a mile from the Hill House, on Monday morning following the arrest of the other parties; found a revolver on his person; did not have a warrant.

John J. Reynolds.—Live at Confluence; had a conversation with Dean about the robbery; he was in charge of Mr. Woodmancey at the time; he volunteered to talk to me about the matter; told me he knew the parties who committed the robbery at Yoder's and that he was about getting up a party to arrest them but they were a little too quick for him.

Marcellus Fike—Knew Jere Thomas; had no particular conversation with him about the robbery; did not say anything about provisions; met Hill on the road the last Monday in March; he says to me "hold up, I would like to have a little talk with you"; he said, "you fellows are a hell of a party set, coming up to my place looking for robbers and shooting through my house. If I find you or any other man in my lot looking after robbers I will shoot him down like a dog." We had a little further conversation, and I left him.

Samuel Pullin—Live at Summit Mills, a half mile from Yoder's; have butchered for Yoder; recognized hams shown in court as belonging to Yoder owing to peculiar cut which he explained to the jury; the hams were the ones taken out of sacks carried by Lewis and Tasker.

J. M. Miller—Live at Meyersdale, am a merchant; have been buying sugar from Yoder for the past 10 years; witness identified piece of sugar taken from sack at Augustine's house by mark he had put on it at that time; also had fitted it into mould used by Yoder and was firmly convinced that it was Yoder's sugar.

Edgar Kyle.—Live at Meyersdale; I helped to arrest these people on the 28th of April, on Sunday; I helped to arrest all except Dean; we went to the house about two o'clock on Sunday the 28th of April and arrested Decatur Tasker, W. B. Hill, Chas. Lewis, Jackson Sullivan; the other young man, Anderson, was arrested near by; I didn't see him arrested; Marshall Sullivan and Thomas were arrested at "Boss" Dean's; Anderson was arrested at the house of a man by the name of Fisher; we organized three different squads to go out on different roads leading to different houses in close connection with Hills; one came in from the south on the "Boss" Dean house where we supposed Marshall Sullivan was and the others to come in on the Hill house; we came to or near the Hill house and the squad was coming down above the house across the fence; a rail broke and the dogs barked and Hill and his wife came out of the house to see what the dogs were barking at; the boys were pretty close to the house and they covered him with their guns and told him to hold up his hands and come up, and he walked up and then they surrounded the house; Lewis, Tasker and Jack Sullivan showed fight; it appeared that way; they got up on the loft of the house, but finally the women prevailed on them and they agreed to surrender; they came out on the porch and surrendered and were handcuffed; the house is a story and a-half, part log and weather-boarded; in the first room, called the kitchen was an old stove; in the room back of that was an old bed and bureau and there was a bed on the floor; there were only two beds in the house; a ham laid on this bureau, partly cut up; in the hall-way running nearly east was a trap-door which they used as a cess-pool; there was a cellar to the house; there was no stairway leading up to the loft, simply holes cut in the floor and a ladder set up; in the kitchen part was a place to get up on the loft by climbing up the logs; the house was very filthy; up stairs we found a gun with both hammers cocked and two shells in the double barreled gun with twenty slugs in each shell, and a lot of lead-shot; we found up there three Smith and Wesson revolvers and one was taken off one of the women in the house; we found also a bundle of ladies hose; (hose shown) that bundle they had here to-day was got at the house; Peter Albright pulled them out from a shelf in the kitchen; I didn't arrest Anderson; my men arrested him near Markleysburg; a pair of steel knuckles, a handy-billy and a pocket knife were found on him; I have the knuckles in my possession; I didn't see the knife myself but I saw the steel knuckles and the billy.

Cross-examination.—There was a rubbish room in this house, on the first door; it was not locked; the door was standing open when I saw it; others were likely in before I was; there were old satchels and a good sewing machine in there; there was a lot of old rubbish scattered all over the floor promiscuously; the stockings and mittens were found together in the kitchen; the people didn't all live there; there were not beds enough for that number of people, unless they cohabit together in some unlawful way; I didn't recover any money in this house, or in this whole transaction; Thomas was standing in the road talking to his brother, and I said to them, "Take that man along;" that was at the Hill House.

Re-direct.—Dean's house is only five or ten minutes walk from the Maryland and Virginia line; Hill's is not so far; it is right on the corner of three States.

Re-cross-examined.—There was a warrant sworn out for Charles J. Lewis and others; I didn't have the warrant.

Dr. Fichtner.—I live in Confluence and was along when this arrest was made.

[Witnesses details of the arrest about the same as the last one].

Edgar Kyle, recalled.— When I arrested Tasker he said, "I wish we had fought till we had died;" he said, "That's what we had intended to do, but the women persuaded us to surrender;" that remark was made when I ordered him to be hand-cuffed to Hill.

Peter Albright—I was along when the arrests were made; I found $107.35; there was one fifty-dollar bill and two twenty-dollar gold pieces; I found a fifty dollar greenback and a twenty gold piece wrapped up in a little rag and tied shut and it was thrown I think by Sullivan to the lady they called his sister; it was thrown on the porch and Rose picked it up and I demanded it from him and opened it in the presence of the crowd and I closed on it; I think that belonged to Sullivan; then I found $20 more on his possession after we had him in the lock-up; it was a twenty dollar gold piece; a ten dollar greenback I found in Hill's possession; I got $3.35 from Sullivan; when I arrested Hill and put the handcuffs on him he wanted to pull away around the garden fence; I told him to stop and he said he would like to walk down along the fence, for there was going to be some rough work, some shooting or something; he said he would like to get out of that, that there was going to be some trouble; I arrested Sullivan at Dean's house and when the other crowd came they had Thomas; I asked him who he was and whether he was one of the gang and he told me he cooked for these men and carried eggs and provisions to them; I found the stockings on a water bench in the kitchen.

Cross-examined—Only one twenty dollar gold piece was wrapped up and thrown to Nettie Sullivan; I didn't arrest Thomas; I was the first man at the Hill house; I didn't open the door of the rubbish room; I saw a book-case in there; I think there was a clock in there; I didn't arrest Anderson; I ordered him to be arrested; I think I handcuffed Tasker; I am sure I handcuffed Hill; I didn't hear Tasker make any remarks.

Dr. Fichtner—re-called.

Thomas said he hardly knew what he was taken up for; I says, "Ain't you interested in the matter?" He said only as cook for them and that he had done work for them; I said to him, "Did you know they were robbers at the time?" he said he didn't at first, but found it out afterwards, but was afraid.

E. S. McMillan.—This property has been in my possession as Sheriff since the hearing; the money that was placed in my keeping was deposited in bank, it may be in the bank yet; I don't know that I have disposed of more than $42 or $43; Mr. Holbert had an order for that; the money that was gotten from Nettie Sullivan, $335, I gave her when she was discharged; there was a fifty-dollar bill and I think a twenty-dollar bill.

Articles identified by the witnesses were now offered and the Commonwealth rested.

District Attorney asked leave to enter a nolle prosequi as to Thomas and Anderson, and leave was granted.

A. C. HOLBERT OPENS THE CASE FOR THE DEFENSE.

Mr. Holbert then opened the case for the defendants, setting forth that the defense set up would be an alibi as to the Sullivans, Lewis and Tasker, and asked the Court to instruct the jury that there was not sufficient evidence to convict Hill and Dean. This the Court declined to do.

Jacob S. Anderson.—I live in Henry Clay twp., Fayette county; I am the owner of the Hill house; my business is teaching; I was teaching in Uniontown last fall; my family removed from Hill house after Nov. election; Wm. Hill moved into it; I gave him possession until I came back again; I retained one room, located in the front of the house; I didn't come back for about three months; I found things all right; there are 15 acres of land attached to the house; I was at the Hill house the week before this robbery; things there were all right then; I moved into the house since Hill moved away; things were all in pretty bad order when I went back; I never kept a cess pool in the hall of the house; there was a board raised in the hall when I went back, and it was very unpleasant in there.

Cross-examination—I had to clean the house out when I came back; it must have been used as a privy; Hill lived on the Dean farm with Marsh Sullivan before he moved into my house.

Marshall Thomas—I live in Preston Co., W. Va., and am a school teacher; know the Hill House; I was in it a few minutes one evening when Hill occupied it; it was his regular dwelling.

Cross-examined—I was there the evening before Christmas; they had a party there; Lewis and Sullivan were not there; I don't know who was there all the time; I am a brother of Thomas, one of the defendants.

Mary Hill—Only me and Hill lived in the house; kept no boarders, only Lewis and Tasker; I didn't show Dr. Fichtner the way to the cellar.

I had no revolver on my person when the arrests were made.

John H. Opel—I live in Elklick township; know Grant Dean; know Sallie Engle; the night of the robbery Dean was at my brother's place; he came there about 8 o'clock; I was there and he went to the barn with me and back to the house; he was there at 10 o'clock; he didn't talk about any robbery; this was the night of the robbery.

Sallie Engle—I live in Elklick township with Henry Opel; know Grant Dean; on the night of 13th April he was at Henry Opel's; he was there till morning; he was with me; that was the night of the Yoder robbery; I am his wife.

Cross examination—We were married at Easter; they call me Sallie Engle yet; he came there about 8 o'clock; he was not out between 7 and 12.

Thomas B. Dean—I know Wm. Hill and where he lived; he lives in Anderson's house; he was sometimes employed by me; I don't know where he was on 13th of April.

Thomas B. Dean—I know Wm. Hill and where he lives; he lived in Anderson's house; he was sometimes employed by me; I don't know where he was on the 13th of April.

J. T. Pollocks—I know the Sullivan boys and Tasker; I know Anderson, Hill and Grant Dean; on the 12th of April Hill came to my house and stayed until the 14th; his wife was with him; nobody else was at my house with him; I seen Marsh Sullivan, Jack Sullivan, Hen Sullivan and John Dinsmore on the 14th in the middle of the forenoon, somewhere about 11 o'clock; my wife and I were out after greens, and found them drinking; I didn't say much to them, because I ain't a drinking man; I am step-father of Hill, and he came there to see his mother; he came there on Friday and stayed till Saturday; I am a brother-in-law to the Sullivans and I am a brother-in-law to Dinsmore; I just spoke to them; they were carousing a little, and I didn't stop long.

Cross-examination—It was about the middle of the forenoon, about 11 o'clock we went to Dinsmore's; we didn't stay more than three or four minutes; I don't know how far it is from the Hill House; this was near Uniontown; this was on Sunday; my wife wanted to stop and see her sister; I didn't take a drink with them; we only stayed a few minutes on account of there being drinking.

Re-direct—I didn't see Tasker at that time; from Markleysburg to where I live is about 18 miles.

John Dinsmore—I live near Beason's works; know Jack and Marsh Sullivan; on 13th of April I found them at my house when I went home from town; Jack and Marsh were there; it was my wife's birthday and we were celebrating it; I took Joseph Paul, Mr. Gooseman and Henry Sullivan along home that night; Jack and Marsh stayed till Monday morning at my home; Monday was the 15th; I saw them on Wednesday at their father's; they stayed there till Sunday; Wednesday was the 17th; seen Wm. Hill on the 13th and 15th; he was not doing anything; Marsh and Jack left on Easter Sunday; Jack went with Marsh to hunt; their sister went along; they went on horse-back and she went in the back.

Cross-examined.—Beason's works is about a mile and a half from Uniontown; they are coke works; I did work there but don't now; we had a gallon of liquor when celebrating my wife's birth day; kept up the drinking till Sunday night; didn't mark down how often I drank in town; drank often; was feeling pretty full when I left town; Gooseman and Paul were pretty straight; the Sullivans were there when we got home; I am married to a Sullivan; I don't know how they came; they stayed till Monday and went away on one of Marsh's horses and his father's horse; I saw Pollocks on Sunday for a few minutes; his wife was with him; they stayed only a few minutes; I am a coal hauler; the company was too lively for Pollocks and his wife, I am not a regular drinking man; I drink but don't get anything out of the road; the gallon lasted till Sunday night but they had a quart; I could not tell where my wife was now; she was 31 years old the 13th day of April; I was born 18th day of February, '51, in West Virginia; in Wheeling.

Re-direct—I didn't see Tasker and his wife together on the 13th of April.

At 6 o'clock the Court adjourned until 8:30 Thursday morning.

THURSDAY MORNING SESSION.

At the opening of the Court Thursday morning a motion for a new trial in the case of Clark H. Benford convicted of violating the liquor laws was presented by Mr. Benford's counsel. The new trial was asked for on the ground that the verdict was against both the law and the evidence in the case. The motion was filed and will be argued and decided hereafter.

The Court announced that night sessions would be held during the remainder of the week.

The grand jury ignored the bills in the cases of L. A. Morrison and S. J. Ringer, and placed the costs on the prosecutors. These were cross cases in which each prosecutor charged the other with having sold liquor without license.

True bills were found against Rev. Amos Sell, formerly pastor in charge of a church at Stoyestown, on indictments charging rape, adultery and fornication and bastardy. Miss Susan Custer makes the information in all the cases.

In the case of Wm. H. Rayman, charged with embezzlement, the grand jury ignored the bill and decided that the prosecutor, Charles Eicher, must pay the costs.

A true bill, on the charge of assault and battery with intent to kill, was returned by the grand jury against C. J. Lewis, Jackson P. Sullivan, Marshall Sullivan and Decatur Tasker.

The grand jury thought that there was not evidence enough on which to find a true bill in the case of the Commonwealth against Burton Harrison, charged with rape, and therefore ignored it.

The case of Commonwealth vs. C. J. Lewis, et al., was then resumed.

Joseph Paul—I live in Fayette county about two miles and a half from Uniontown; and about half a mile from John Dinsmore; I am a miner and am not related to any of these parties; I am not acquainted with John Dinsmore; I know Jack and Marshall Sullivan; I seen them at John Dinsmore's house on the evening of the 13th of April last; I came out with Peter Gooseman; it was Dinsmore's wife's birthday and I went out with them and found the Sullivans there; I stayed till something after midnight.

Cross-examined—Dinsmore asked me to go out; I know the date by the account I read in the paper; the paper came out on the 15th; it is a daily paper; I have known the Sullivans a good while; I live close to the Beason's Works and close to Cool Spring Hollow.

Mr. Koontz here asked the witness if Cool Spring Hollow was not the rendezvous of the McClellandtown gang for quite a while before they changed to Markleysburg; the question was strenuously objected to but the witness was directed to answer.

I wasn't part of the McClellandtown gang; I don't know that Cool Spring Hollow was their headquarters; I heard of them, but can't remember who they were said to be; think this same party was blamed; I wasn't intimate with them; I am acquainted, that's all; I didn't go on a spree with them; I didn't know they were there till I went; we were not very drunk; Jack Sullivan, Marshall Sullivan, John Dinsmore, Hen. Sullivan and Mr. Gooseman was there; Gooseman was not blamed with being a member of the gang; I don't think Gooseman and Hen. Sullivan were blamed.

Re-direct—I know Tasker; know nothing about his whereabouts on the 13th of April.

P. W. Gooseman—I live near Beason's Works, Fayette county, about two miles from Uniontown; know Jack and Marshall Sullivan; on Saturday the 13th of April Dinsmore came past and I went with him to Uniontown; he asked me to come home with him; said they would have a little party as it was his wife's birth-day; we started about 8 o'clock; Hen. Sullivan and Joe Paul and us all went out together; the Sullivans were there when we got there; I fix the date by John telling me it was his wife' birthday and we would go out and have a little fun; we seen in the paper the first of the week about the McClellandtown gang being at Yoder's; it was supposed to be that gang; I don't know anything about Decatur Tasker at the time; he had left home some time before.

Cross-examined—I am Tasker's step-father; it seems it was talked that the portion that are here, some of them, were the McClellandtown gang; Tasker had lived right close to me; the Sullivans are second cousins of mine; I am not related to Lewis; I am acquainted with Hill; he was over there; he came on the 12th; I am well acquainted with Mrs. Hill; we were drinking together on the cars coming over; and Paul and me had little liquor; had right nice time at Dinsmore's that night; I live half a mile from Cool Spring Hollow; only lately I heard that was headquarters of the McClellandtown gang; it was in the papers; I know it was the 13th by my working at that time on the road and setting down the time.

Henry Sullivan—I live in Fayette county, near Uniontown; I know Jack and Marshall Sullivan; I work at Uniontown and board out at Beason's Works; I came out there on Saturday and stayed over Sunday; I went home on the 13th and came across Peter Gooseman, Joseph Paul and John Sullivan; on the road John said it was his wife's birthday; I was just going out to my father's and didn't intend going farther; he told me that and I went up to his house with the boys; that was Saturday, the 13th of April; when I went up to Dinsmore's I found Jack and Marshall Sullivan there, and the fact that I hadn't seen Jack for some time before is the reason I recognize the day; I saw Wm Hill on Sunday but didn't see Tasker.

Cross-examined.—I am brother of these defendants; my father lives at Beason's Works; Marsh Sullivan lives near Markleysburg; Jack lives near where my father lives; Markleysburg is eighteen or twenty miles from there; we were drinking in Uniontown; I staid at Dinsmore's till Monday evening and was with Jack and Marshall all the time; Dinsmore is a brother-in-law of mine; he's married to my sister; I am learning the moulding trade; know nothing about the McClellandtown gang; I heard of the gang, but I didn't know who they were; I have heard these parties named as being the ones; I was named myself at first as belonging to the gang; I was arrested once; an old man hired us to rob him and paid us for it; he hired us to rob himself and paid us for the job, but he got the boodle; he paid us $20 each; he was supposed to have $2700 of the company's money and he was paymaster; I was sent to the penitentiary for it for six years and a half.

Gen. Koontz asked the witness who was arrested with him, but the defense objected and the question was not pressed. It transpired afterwards that it was his brother Jack, one of the defendants.

Re-direct—I was 17 years old when sent to the penitentiary.

H. J. Engle—I live in Elklick township and know Grant Dean.

[At this point General Koontz stated that the Commonwealth deemed it unnecessary to undertake to prove an alibi as to Grant Dean and Wm. Hill because the theory of the Commonwealth is that they were only accessories before the fact and must necessarily have been absent.]

I know Grant Dean; on the 13th of April he was at Henry Opel's; I couldn't tell you what time he got there; he left me close to St. Paul's church; he told me he was going to Opel's;—objected to.

I know his reputation for honesty; it was good before this occurred.

Cross examined—I don't know of my own knowledge that he was at Opel's; known him over two years; heard a great many speak about him since the trial and before; I lived within about a half-mile of him; he is married to my neice; his lady told me they were married; St. Paul's church is about two miles from Yoder's.

John Lentz recalled—I know the neighborhood in which Grant Dean lived; he lived with me the greater part of the time; I never heard anything against him.

Cross-examination—He was in my employ and was true to my trusts; others asked me about him; heard no one talk about him before this occurred.

John Opel was recalled as to Grant Dean's reputation and testified that it was good.

Thomas Reese—I live at Meyersdale; I run a coal mine; know Dean since March; I don't know much about him; never heard anything against him before this.

David Fuller—I live in Elklick township and am a Justice of the Peace; seen Grant Dean frequently; didn't know him till March; never heard anything against him.

J. B. Dean, recalled.—The community in which I knew Grant Dean is about Markleysburg; as far as I know his reputation is good; he is no relation to me, only my father raised him.

J. H. Humbeman, recalled.—I live near Markleysburg; know Grant Dean since we were boys; his reputation is good.

T. J. Engle, recalled.—Testified that Grant Dean's reputation was good.

M. W. Fike, recalled.—Said Grant Dean's reputation for honesty was good.

S. M. Glisson.—Live in Henry Clay township, four miles from Markleysburg; know Grant Dean; his reputation for honesty is good.

The Court here reminded counsel for the defense that an *alibi* as to Dean and Hill would be useless, they only being held as accessories and of necessity must have been absent from the scene of the crime at the time it was committed.

Jackson P. Sullivan, one of the defendants.—I live near Beason's Works, Fayette county: I know Wm. Hill; he lives twenty-five miles from Beason's Works; on the night of the 13th of April, I was at John Dinsmore's; I fix the time because I know it was my sister's birthday; Dinsmore is married to my sister; I stayed there from Saturday evening till Monday morning, the 15th of April; then I went over the mountain with my brother to go hunting; I saw Hill on the 14th, at my father's house, near Beason's Works; we went to Marsh Sullivan's on Monday, April 15th, and stayed there, I think, till Thursday; then we came back over the mountain again to my folks; we came over in a buggy; Marsh wanted to get a house; I know absolutely nothing about the Yoder robbery, more than I have read; I never saw the goods said to have been taken, except when I saw them here in court.

Cross-examined.—I don't live with my father, but live a couple hundred yards east of him; went to Dinsmore's on afternoon of the 13th; went over the mountain on the 15th; had no previous arrangement to go; Hill is my nephew; Gooseman is not my uncle as I know of; I was over at Hill's hunting; had my hounds with me; wasn't on the loft; the door was not locked; there were no revolvers found on me; I don't know that there were any in the house; I had a fowling-piece there; there was no gun with both hammers up; my gun was setting in the room; I brought it there to hunt foxes.

Beason's Works is near the place called Cool Spring Hollow; I don't know that that is the place where the McClellandtown gang stopped; I heard of the gang through the papers; I heard I was connected with it, but you can see most anything in the papers; I don't know that Hill's house was another headquarters of the gang; I believe I did see something to that effect in the papers; Charley Lewis, Decatur Tasker, Hill and myself were at Hill's on the Sunday we were arrested; Mrs. Hill, my sister, and a lady by the name of Miss Teats, who was on a visit; my sister was also there on a visit; they weren't there cooking when we were arrested; I had no revolver on my person; I had a revolver there; I don't know where it was, I laid it on shelf when I went there; there was not a door locked or threat made; Tasker didn't say he was sorry we hadn't fought; I have been arrested before; it was in May or June, 1881, in Fayette Co., for robbery; I was convicted and sent to Riverside Penitentiary; we served six years and a half there; I wasn't arrested in West Virginia; they didn't try to arrest me there; never got anything at Yoder's and know nothing about it; never passed through Harnedsville for the last fifteen years to the best of my knowledge; I went South after I got out of the Penetentiary to Alabama; come back to Cincinnati and went into saloon business then went to Michigan; was in the broom making business two or three weeks there; went to Chicago then, to see the place; stayed only couple of days; then came home to Fayette county last fall; have not been doing much of anything since, except hunting a little.

J. M. Sullivan, another of the defendants and generally called Marsh, was then sworn. He said—I live in Henry Clay township, Fayette county; I know Wm. Hill; I know he was over on the other side of the mountain on a visit; he hired a horse and buggy of me on the 11th; I was at John Dinsmore's on the 13th of April; Jackson Sullivan was there too; it was my sister's birthday; stayed there till Monday; I know nothing about the Yoder robbery or the goods, only what I saw in the paper; know nothing about the money or anything at his house; never saw his house or him either till I saw him here at Somerset.

Cross-examined—I moved where I live now last fall; Hill moved over to Markleysburg last fall; he is a nephew of mine; didn't arrange to move there together; the houses are about a quarter of a mile apart; I was at my own house when arrested; I went away in a buggy; I came over the mountain on the 15th; didn't go away from home on the night of the 15th in a buggy; Dean lives in the same house I live in; it was on Thursday the 18th I went away; it was after dark; it was not midnight; I was not at Engle's and asked for bread and butter; I didn't see Engle at Meyersdale before the 'Squire; I didn't see Miss Engle; I was arrested about 15 or 18 years ago in this county for assault and battery; the sentence was 8 months in jail; I didn't quite serve out my time; I didn't break jail; I crawled out of a hole.

The witness was here asked to state who made the hole, but he declined, and the question was not pressed.

I don't know anything about the McClellandtown gang; I was never charged with belonging to it in my own county; Hill's house was not my headquarters; I saw Lewis and Tasker there once or twice; I wasn't in the habit of going there, but have been there; I got out of jail twice here but didn't break out either time; I went out through a hole the second time too; I was in both times for the same offense; the Fayette county authorities were not after me to arrest me; the night they were over after Lewis they were at my house; they said they were after Charley Lewis.

Mr. Holbert of counsel for the defense here offered the record to show that when Marsh Sullivan was indicted for jail-breaking, at the time referred to in his testimony, the grand jury ignored the bill against him.

Wm. Hill, one of the defendants—I live near Markleysburg in Henry Clay township; Jacob Anderson owns the property; I rented it as a dwelling; moved in shortly after the fall election; stayed till arrested; I know Lewis and Tasker; they were there at my house over night; they staid one two or three days, paid for what they got and went away; the second time they came they allowed to go away on Monday and then these parties came on Sunday and arrested them and me too; on the 13th of April I was at my mother's at Beason's works; returned on Sunday; the Sullivans are my uncles; know nothing about those goods shown here; never saw the stockings; they had fetched satchels and I supposed they were their clothes; I am a member of the Dunkard church.

Cross-examined—Lewis lived in Uniontown and Tasker lived on Brady's farm; I worked with them in the mines some time ago; they stayed the first time 3 days at my house, nobody was hunting for them then; the Sheriff of Fayette county didn't come there after me and them; I was not charged with any offense; Jack Sullivan wasn't at my house when the Sheriff of Fayette county was there; the Sheriff wasn't there watching my house to my knowledge; Jack Sullivan, Tasker and Lewis weren't staying there; when they were there they were out of the house and around the fields where I was working. They talked awhile and said they were going to Davis City, and stopped there to rest up; they were going to go fishing and hunting and then were going away; they were all going fishing; they were there three or four days before they were arrested; I don't know their fishing was done mostly with revolvers and shotguns; there were three revolvers there that didn't belong to me. I was out in the wood yard when they arrested me; I don't know which one brought the bundle with the stockings; I was not at the house when they came; I was there when Jack came; my wife was at home when they came; I came back on the 14th; I was arrested somewhere towards the last of the week; I had Marsh Sullivan's horse and buggy; these men made no resistance that I saw; I don't know they were up stairs; when my wife and I were put under arrest I said we would walk away for fear some of these men would shoot.

The witness was cross examined further but persisted in his denial of all knowledge of the robbery. He admitted, however, that he was arrested in Uniontown for getting drunk.

Grant Dean sworn—I lived formerly in Fayette County; within the last year I resided in Somerset County; I lived with John Lentz on the 13th of April. I don't remember whether I worked or not; on the night of the 13th I was to see my wife at Henry Opel's; got there about 8 o'clock; I was arrested at Joseph Savage's in Fayette County; when in Fayette County I made my home with Marsh Sullivan; I know nothing about the Yoder robbery only what I read and talked to people; On Sunday morning after the Yoder robbery I went to St. Paul's Church and saw this young lady and asked her if she knew of folks going after the robbers; she asked me why I didn't go and I said they were too flip for me.

In regard to the testimony of Ephraim Engle, a witness for the Commonwealth, examined yesterday, the witness said he was joking when he said, "This is some of Yoder's money."

I went to Fayette County because I hadn't been there since the election. I loaned a man $10 up there; he was to send it to me and didn't and I went up to get this money and attend to some other business.

Cross-examined.—When I was with Marsh Sullivan he lived in Boss Dean's house; Marsh married a daughter of the man that raised me. I hadn't been there for a good while; at that time Hill hadn't went to housekeeping; knew Fisher; never saw Lewis but once before; I never asked Mr. Livengood whether John Beachy or Peter Hay had any money; Livengood is mistaken about that.

This witness was cross examined somewhat further, but nothing important was elicited, after which the defense announced that their case was closed.

The Commonwealth stated that they were willing to allow a *nolle pros* in case of Grant Dean and a motion to that effect was filed with the court by the District Attorney. After some discussion a motion for a *nolle pros* was also filed in the case of Wm. B. Hill with the understanding that he be bound over to appear either in Somerset or Fayette Counties as receiver of stolen goods. The Court allowed a *nolle pros* in case of Grant Dean and bound Wm. B. Hill over in the sum of $1,000 for his appearance at the next term of the Court of Quarter Sessions to answer the charge of receiving stolen goods.

ARGUMENT OF COUNSEL.

The District Attorney, F. W. Biesecker, opened the argument for prosecution, by first detailing the circumstances of the robbery. The evidence was then all reviewed, showing in his estimation that it fastens the crime on the accused. He said we have shown by uncontradicted testimony that the accused parties were in the County on and about the Yoder settlement, going from place to place, and making suggestive inquiries as to rich farmers. They were not working anywhere, or seeking employment. We have, also, proven that they were in the County on day of robbery. Also, they were identified by Stevanus, Ella Baker and Miss Wilhelm who were at Mr. Yoder's, and who were tied by them. After the robbery we have shown that they were going out of the County towards Fayette County, and were arrested with the stolen property in their possession. This was clearly proven by such witnesses as the three Hanna's, and other reputable men of the County. The attempt to prove an alibi by immediate relations and jail birds was, as the jury well knew, a most miserable failure. Under all the circumstances we do not doubt that your verdict, gentlemen of the jury, will be guilty in form and manner as indicted.

John H. Uhl, for the defense, referred to the gravity of the charge showing the penalty involved if conviction follows. He said in substance that the prosecution failed to identify clearly any of the accused. Only a few of the witnesses said they saw either of the Sullivans in Somerset County, and they were not positive in their assertions. We contend that they have not proven the presence of either Jack or Marsh Sullivan in the County. All we ask is a verdict in accordance with the sworn testimony.

We have proven by good witnesses that both Sullivans were over in the region of Uniontown on the day of the robbery and on several days after this. How could these 7 or 8 witnesses be mistaken, or is it possible that they have perjured themselves. These witnesses swear positively that both the Sullivans were at the birthday party at Dinsmore's in Fayette County on the 13th of April, the day Mr. Yoder was so fearfully abused and robbed.

The argument founded on the fact that the Sullivans had been in prison, ought to have no weight. They gave testimony like honest men, and do not they look like truthful witnesses.

Court Adjourned.

Court convened promptly at 2 o'clock; and four prisoners only, viz. Lewis, Tasker, and the two Sullivan's were marshaled in by the Sheriff, the others having been discharged.

A. C. Holbert, Esq., one of defendant's counsel, addressed the jury in substance as follows:

We don't deny that a robbery was committed at Yoder's house, nor are we here to say a word in palliation of the crime; but are here to deny that these four men, nor one of them had anything to do with it. The jury must divest their minds from all prejudices and form an opinion on the evidence offered.

Certain principles to be kept in view, viz. Every man is presumed to be innocent until found guilty; the prosecution must make out the guilt of the accused, and show that none other than they could have committed the robbery; that the prisoners must have the benefit of reasonable doubts. What is a reasonable doubt? Many definations. But take this, if you were particularly connected with the prisoners a doubt would lead you to acquit. So you ought to view your duty in this case.

Four men are weeded out, and only four are before you; Stevanus tries to identify them, and having seen the men often, finally, through prejudice thought they might be the men. Ella Baker identifies Lewis and Tasker, by having seen them before; could not others have been mistaken for them. Mr. Yoder, with good eyesight could not say these were the men who so brutally abused and robbed him. Again, none of the money was found and identified, and the fact that a few dollars were found in the possession of one of the Sullivans was no evidence, as any young man could easily make a little money. The prisoners were not identified by any peculiar mark about them; the witnesses only saying we know them because we know them; it is like saying the cow crossed the road because she crossed it; the Commonwealth has proved too much. Hanna's and McClintock's testimony don't mix more than oil and water; what becomes of the shadow of the shade the latter spoke of. The men carrying bags, seen by him, seem to be other kind of men than those described by Hanna. Four men travel over to Elklick but only two returned. What became of the other two? The Commonwealth only brings two back, Lewis and Tasker. Where were the Sullivans? We have already proved that they were over about Uniontown, thus proving an alibi. You would prove where you were at any certain time by the friends with whom you were; the Sullivans proved where they were on the 13th of April by a brother-in-law, Dinsmore.

Prosecutors try to prejudice the case by singing into your ears the boldness of the McClellandtown gang. Joe Paul, and Peter Gooseman swore the Sullivan's were at Dinsmore's at the time named. So Pollocks a brother-in-law swore.

Both Sullivans, and their brother Henry testified to same effect, Jack Sullivan incarcerated here, with no opportunity of consulting with others, tells a straight-forward story. No evidence of collusion.

District Attorney most unfairly tried to prejudice you by saying if you believe the theory of an alibi, you are doing injustice to the Somerset dutch. It was the most unfair thing he ever heard.

Do not your consciences tell you there are grave doubts of the guilt of any one of these prisoners.

F. J. Kooser, for commonwealth said among other things: Bear with me only a little while gentlemen of the jury. I will not weary you.

The case is greatly simplified by having only four men before you. Let me first define what a burglary is. We have traced what was stolen into the hands of all four of the men. Proved that four villains, cowards, entered into Yoder's house. Didn't know what would be the nature of their defense, didn't know but what the dodge would be Lewis' favorite heart disease. As in the famous Bardel-Pickwick case they have tried old man's Weller's *alibi* theory.

We can don't get hold of the money as the counsel on the other side took care to get it.

We have found them coming into Somerset County, going over to Elklick, spending time there. The Engle's so testify, as well as some others. Lewis and Tasker had been at the house a week before, and knew about how to enter by the two doors. They had asked about rich people.

On the 11th of April Marshal Sullivan left home and was away up to the 14th. And now two pairs were seen at Harnedsville and Walker's Mill, here in Somerset County. Tissue and Wright two witnesses saw and identified them by the blue necktie and the big collar. They were seen to be moving in the direction of Yoder's. Both Mr. Engle and his daughter saw Marshal Sullivan when within a mile of Christian Yoders.

As to the crime itself language fails to describe it. Only brutes and cowards are equal to such a deed. And here they sit. Stevanus saw them there for four hours. He had the best of opportunity to see and remember them. Likewise Ella Baker, recognized them.

Lewis and Tasker were arrested by Hanna and others. Where were the Sullivans? Too well known to be prominent and therefore they elude public observation.

We trace them to their rendezvous near Markleysburg, and find them in possession of Yoder's goods.

As to the alibi. Brother-in-law Pollack, and stepfather Dinsmore had much to say about celebrating Dinsmore's wife's birthday with a good deal of whisky, Gooseman and Paul were there.

Henry Sullivan, a brother, one of the alibi witnesses, admitted having committed a robbery with his brother Jack, and serving six and one-half years imprisonment in penitentiary for it.

As to Jack Sullivan, he has not done one honest day's work since out of the penitentiary, but floated to Alabama, to Cincinnati, to Michigan, to Detroit, then to Markleysburg and over here into Elklick township; living how?

We ask in the name of all we hold dear that you render a verdict of guilty.

A. C. Holbert Esq., said he wished to say he did not receive the money taken from prisoners. Mr. Kooser replied that he did not say the counsel took the identical money.

The Judge said it was an error to take the money and place it so as not to be identified.

JUDGE BAER'S CHARGE.

Gentlemen of the Jury:—Whether the prisoners at the bar are or are not of the "McClellandtown gang" should not affect your finding in the issue you are now trying. The prisoners at the bar stand indicted for the offense of burglary. The indictment charges the offense as burglary.

Burglary is the breaking and entering into the dwelling house of another with the intent to commit a felony therein. The statute prevailing in Pennsylvania provides as follows:

If any person shall, by night, willfully and maliciously, break or enter into the State capitol, or other public building belonging to the Commonwealth, or to any city or county thereof, or to any body corporate, society or association, or into any church, meeting house or dwelling house, or out-house, parcel of said dwelling house, with an intent to kill, rob, steal, or commit a rape, or any felony whatever, whether the felonious intent be executed or not, the person so offending shall, on conviction, be adjudged guilty of felonious burglary, and be sentenced to pay a fine not exceeding one thousand dollars, and to undergo an imprisonment, by separate and solitary confinement at labor, not exceeding ten years.

So much has been said of the enormity of the offense charged; and of the necessity that a jury should carefully consider all the evidence in the case, and should, after receiving the law from the Court, fairly, impartially, and without prejudice or passion, and without any influence from outside sentiment whatever, decide the issue on the evidence.

The issue is the guilt or innocence of the prisoners; keep this in mind, and thrust aside all feeling that may have been incited in your breasts on first hearing of this great offense. Know no county or township lines. Look at the prisoners as men—try them as men—and decide honestly and justly, on the evidence, between the Commonwealth and the prisoners.

Let no other crimes that have been committed in this county have any effect upon your minds in finding a verdict. Try the prisoners on the charge contained in the indictment; and on that alone.

Give all the evidence due consideration—go where the evidence of credible witnesses leads you; whether it lead to guilt or innocence; and be not swayed from the right and from duty by sympathy or by prejudice, or a feeling of revenge.

THE EVIDENCE.

The evidence, if believed by the jury, shows that certain persons, on the night of the day of the 13th of April, 1889 broke and entered the dwelling house of Christian Yoder, one of the good farmers of this county, and there committed a felony. The offense there committed was, according to the definition and statute just given you.

BURGLARY.

Who committed the offense, is the question for the jury. The burden of showing that an offense was committed, and who committed it, lies upon the Commonwealth, whose duty it is to established it, by proof that satisfies you of the guilt of the accused parties beyond a reasonable doubt; for it is a first principal of criminal law, that everybody is innocent of any offense until the Commonwealth proves guilt. The Commonwealth in its effort to prove guilt, calls first Samuel Stevanus, who testifies to the burglary and the felony committed as one who was there, an inmate of Mr. Yoder's dwelling. It is not necessary to detail to you the manner and the cruelty of the act. The goods there stolen, he says, were about $800 of Mr. Yoders, $30 of Miss Baker's, and that some sugar, hams, chestnuts, stockings, pillow slips, sacks, jewelry and a demijohn, there before the burglary, were missing afterwards. He testified how and by whom he and the other inmates of the house were tied. He undertakes to identify certain of the defendants as parties doing the act; he points out Lewis as the man who tied him; that he saw his face. As to Tasker, he judges from size and voice; says he saw eyes of one he now says was Marsh Sullivan, and saw the upper part of his face, above the mustache.

Ellen Baker, also an inmate of Mr. Yoder's dwelling at the time of the robbery says the stockings that were in evidence, and which were found in the house where the arrest was made are her's, and were taken at the time of the burglary; she points out Lewis and Jack Sullivan as two of the parties and says she could not then see the face of the others. She testifies that a week before the burglary Lewis and Tasker were at Yoder's and got their supper, and she also states the kind of property taken.

Christian Yoder, the old gentleman whose dwelling was burglarized, gives an account of his loss and the manner of the entrance into his dwelling and the cruelties inflicted upon him, but don't undertake to identify any one. He states how, by cruel treatment he became unconscious, and is hence unable to say how they appeared.

Fannie Wilhelm substantially corroborates the statements of Stevanus, Miss Baker and Mr. Yoder as to the burglary and the manner in which it was done.

Anna Engle, early in April preceding the burglary, says Lewis and Tasker came to her father's for apples, etc., and says that on the day of the Yoder robbery a man came and asked to buy a loaf of bread and some butter; she undertakes to point out the man as Marshall Sullivan, a prisoner on trial.

B. Y. Maust says he saw men whom he points out as Lewis and Tasker, and who on 5th April 1889 ate supper with him at Christian Yoder's.

Geo. Rubright says on 5th April 1889 he passed two men, whom he now points out as Lewis and Tasker on their way to Meyersdale.

Wm. Brown found two men on Wm. Meyer's hay mow the Saturday preceding the robbery.

Thos. B. Dean, of Fayette county, says he lives in the same house with Marshall Sullivan, and that he, Sullivan, was from home from April 11th to 15th.

John Davis says he saw four men in pairs of two, passing some distance apart on 2nd of April on Confluence road going in one direction, and on 15th, of April saw two men going in opposite direction carrying sacks, and points out Lewis and Tasker as the men, passing both ways.

A. Conglenour, saw 4 men in pairs, pass in Addison township, two of whom he points out as Lewis and Tasker.

Mr. Tissue, on 12th April, saw four men come, and take cross cut over hills one of whom looks like Lewis; one like Jack Sullivan.

Howard Wright on 12th of April saw five strangers, four of them in pairs; one some distance in rear, passing through Harnedsville, in this county, he says he recognized one as Marshall Sullivan, and says he saw men whom he points out as Lewis and Tasker carrying sacks filled, at a later day.

Wm. Zufall says on 12th of April he saw four men; recognized M. Sullivan as one.

Theo. Engle says he saw a man at his place 13th of April, 1889; asked to buy a loaf of bread and butter; takes M. Sullivan to be the man.

M. Bonnell says met three men in country, were going towards Fort Hill; two had sacks on shoulders; on Sunday, April 16th; thinks Lewis and Tasker were two of them.

M. McClintock saw three men evening of 14th, near Fort Hill, one had a sack. Says he feels certain Tasker was one, but might be mistaken.

B. J. Hanna says on the 15th April he saw Lewis and Tasker in his father's barn, with two sacks and a demijohn, meat in one sack; and on 12th of April had seen four men pass in couples; recognizes Jack Sullivan as one, but not absolutely positive.

Wm. Hanna says he saw Lewis and Tasker in his barn at 11 o'clock of 15th; saw them on them on road afterwards with sacks; details how arrest was made, and that he left them in custody of Augustine and others.

Jno. Hanna says on 15th of April he helped to arrest Lewis and Tasker as he says; he details at length how they escaped from him and his friend; long enough to enable him to recognize his men.

Ross Augustine details the manner of same arrest and how his man escaped; says they had sacks, which in court he identified with contents; says the men were Lewis and Tasker.

Jno. Walker corroborates Hanna and Augustine.

Israel Hoover recognizes Lewis as one he saw going up on 13th of April.

Numerous witnesses were called to connect Thomas, Anderson, Dean and Hill, but these are now out of the case and you have nothing to enquire of as to them.

Mr. Fullam endeavored to identify some ham found in the sacks; U. H. Miller, the sugar and moulds.

Sheriff Kyle and Dr. Fichtner testified as to the arrest, and the manner and place of arrest of the parties, the finding of the stockings which Miss Baker identified as hers, in Hill's house where some of the prisoners then were.

Peter Albright testifies as to the arrest and the money taken from the prisoners; none was produced on trial, and no inference can be made from it; nothing appears to identify it. It had been inadvertently deposited by the officer.

On this testimony the Commonwealth seek to convict these four prisoners of the offense charged.

Whether the witnesses satisfied you as to the identity of the parties, is for you.

The defense set up, is as to the two Sullivans, Marshall and Jackson, that of an alibi. It is alleged they were at the time of the alleged burglary, in Fayette county, a distance of more than 30 miles away on the day and time and for a day previous and several days after; and that therefore it was impossible that these two Sullivans could have been participants in the burglary.

An alibi is as much a traverse of a crime charged as any other defense, and proof tending to establish it, though, not clear may with other facts of the case, raise reasonable doubt of guilt.

In cases where the Commonwealth rests upon positive and undoubted proof of the prisoner's guilt, it should not be overcome by less than full clear and satisfactory evidence of the alleged alibi.

The evidence which tends to establish an alibi, is for the jury, and though an alibi be set up by the defense, the burden of proving the prisoner's guilt is not thereby shifted. The burden remains on the Commonwealth to satisfy the jury of guilt, beyond a reasonable doubt, and the jury must take into consideration all the facts in the case and the proof of the alibi in coming to a conclusion.

This as to the alibi, involves the manner in which witnesses testify, the credibility of the witness, and the reasonableness of the alibi set up—the jury consider whether the alibi as to time is reasonably made out; for the facts of the parties presence at a certain place on a certain occasion may be all true and witnesses may be mistaken as to time when the time and circumstances, and the absence at another place have been established, it is evidence like any other evidence, and may be a full answer to the charge. And even though not so clearly established, it may with other facts in the case if any are found, raise a reasonable doubt.

When an alibi is duly established it is one of the most decisive defenses. But the evidence adduced to support the alibi requires to be minutely considered and the plea is not conclusive unless the circumstances surrounding it show that it was impossible for the prisoners to have committed the offense or unless the proof of the alibi and the other facts in the case raise a reasonable doubt.

To sustain this alibi, the defense called—1st. J. C. Pollocks says—saw the Sullivan boys, Marshall and Jackson on 14th April at his home in Fayette county Pollocks is brother-in-law of Sullivan.

2nd. John Dinsmore says—Jack and Marsh Sullivan were at his home in Fayette from 13th April to 15th, celebrating Mrs. Dinsmore's birthday; said they had a lively party; said he took Hen Sullivan, one Paul and a Mr. Gooseman to his house that night—Dinsmore is a brother-in-law of Sullivans I believe—you will remember what relationship exists.

3rd. Joseph Paul says he saw Jack and Marsh at Dinsmore's on 13th April at the celebration—no relative.

4th. P. W. Gooseman says he was at Dinsmore's on the 13th of April, at the feast; I think he said the Sullivans were his cousins and that he was the step-father of Tasker.

5th. Henry Sullivan, a brother of Marshall and Jackson, said he was at the birthday feast on 13th April, and his brothers were there. This witness being cross-examined to affect credibility admitted he once served a sentence for on a charge of robbery, but 17 years ago.

6th. Jackson P. Sullivan one of the defendants, says he was at the birthday party of his sister on the 13th with the others who testified as to being there, and was there till the 15th. He denies that he knows anything of the Yoder robbery, and denies that he was at the places where witness for the Commonwealth undertook to identify him. On cross-examination admits he served a term in the penitentiary for robbery.

7th. J. Marshall Sullivan says, he too was at the sister's feast on her birthday on the 13th, and was not at Yoder robbery and knew nothing of it, and denies he was at any of the places, that the witnesses of the Commonwealth say they saw him.

Wm. Hill, says Lewis, Tasker and Jack Sullivan were arrested at his house; he says Lewis and Tasker asked to remain a few days to rest up.

Of the 7 witnesses who swear to an alibi, Mr. Paul was no relative; Dinsmore, Pollock, Gooseman, Hen Sullivan, were it seems, relatives, and Jackson and Marshall Sullivan are defendants. Defendants are made competent witnesses by statute, and relatives are competent witnesses also. But the credibility of all witnesses is for your consideration.

The defense as to Lewis and Tasker is based mainly, on a denial that the Commonwealth has sufficiently proved their identity as the persons who committed the offense. You will readily recall all the evidence that bears upon their connection with the offense.

It is claimed by the defense that there is no positive proof that the prisoners or some of them, committed the offense, and that the circumstances in proof are insufficient to establish guilt.

When a criminal charge is to be proven and sustained by circumstantial evidence, the proof should not only be consistent with the prisoners guilt, but it should be inconsistent with any other rational conclusion.

To justify the inference of guilt from circumstantial evidence, the existence of facts which inculpate the prisoners or blame them, must be absolutely incompatible with the innocence of the accused persons, and incapable of explanation upon any other hypothesis than that of guilt.

Counsel has invoked the presumption of their innocence.

It is true every man is presumed innocent of a criminal charge, and is protected until he shall have been proven to be guilty beyond a reasonable doubt. The Commonwealth must prove all the material allegations in the indictment, satisfying the jury on the whole case, beyond a reasonable doubt. If this is not done the prisoners should be acquitted.

If they satisfy you beyond a reasonable doubt that the prisoners are guilty, then as to such of them as no doubt is found the jury should convict.

It is not the rule that these must be acquitted in all cases of doubt.

To acquit the doubt must be a reasonable doubt.

Judge Agnew, one of Pennsylvania's great judges says:

A reasonable doubt must be an honest and conscientious difficulty in believing; not a doubt that is merely subtle and ingenious. It must be one that arises on the evidence, and not fanciful nor conjured up, to escape consequence; it must strike the mind with such force as to compel it to pause in yielding belief.

The jury then retired and the four prisoners were returned to the county jail.

At half-past eight o'clock, Thursday evening, the jury in the Yoder robbery case came into Court.

"Gentlemen of the jury, have you agreed upon a verdict?" was asked by Clerk Horner.

In response to the question the foreman handed the verdict to the Clerk, who handed it to the Court. Judge Baer read it and passed it back to the Clerk, who said:

"Gentlemen of the jury hearken to your verdict as the Court records it. In the issue joined between the Commonwealth of Pennsylvania, plaintiff, and Charles J. Lewis, Jackson P. Sullivan, Marshall Sullivan and Decatur Tasker, defendants, you say you find the defendants guilty in manner and form as they stand indicted, and so say you all."

Whilst the above formula was being repeated by the Clerk, the silence of the vast audience was so profound that each person in the crowd could almost hear his neighbor think, and the affirmative response of the jury, although spoken in a low tone of voice, was distinctly heard in the furthermost parts of the room.

After the announcement of the verdict which the defendants heard without changing countenance, they were sent back to jail.