if he hed sees sky men go up the moun- stood in the same place all the time; we he wasn't going to swear that it was on tain yesterday; he said be hadn't men were walking, an on good torous with Wednesday. neight have gone up but they were so Mr. Vancer; do not know there is any lease they dedn't see there; I asked him bad feeling between us; I have none; I if he had beard of the murder; told him farm a little. about it; he mid it was hard; this was like-direct-Do not know if there have me arrested for signifing a goose; I did

close to where I was working; Charlie line's mill; they were the first tracks 28th. and Lou Vancer told me that they had that I saw; somebody had laid down seen a couple of fellows going up the there to drink; the tracks were going to en in what he said; he used the words who they were and they said they did not see any until we came out on the top past; I don't remember everything that not know; I remember bending timber of the hill; the tracks then came out on out from where they were working on to the pike again; then we came buck tile 27th of February, it was near about toward Jenner; looking for tracks and to four o'clock when I left with the last see if they had not struck out in the field lost load of timber; the place where I some place; the first tracks I saw were at loaded the timber was about 75 yards Henry Picking's; they were coming from the pike; they were there when I down over the bottom in the direction of left; Lou was down with me and Char- Umberger's; right above Pickings where the was up further, about three or four the road makes a turn; I measured them varie; they cut some after I left, above at different points; the gam boot tracks there; I was wheretimber was cut; there | measured in length 10] inches and the was some out above there before that leather boot or shoe was 11 inches long; day; the nearest that was cot was about | width of the ball of the foot 31 inches in yards from the pine as near as I can too about 3; inches; the heel measured 21 by 2] inches; the rise of the heel

Cross-examination.—Hanied the time at the instep three-fourths inch; the gum her out on the pike; the last trip I made | boots had been worn considerable; was about four o'clock; do not remember | could tell that by the track; I took parwhen I made the trip before that, but ticular notice of the tracks made by the think it was about four o'clock; don't leather boot or shoe; there were two remember haw many trips I made that rows of nails run around the outer edge day; am now working for Watson and of the heel; right in the centre there Foster Menoher at Ligonier; they are were four nails in diamond shape. (Wit-

Churies Varneer, recalled .- Know Nonh | boots exhibited in the court and said Marker; may have told bim that on the the tracks be had measured could not afternoon of the murder I had seen a have been made by those boots.) The coupe of men going up the mountain gum boots had no leather soles; I have but could not tell who they were, but do the rule with me that I used in making not remember having any conversation | the measurments; we discovered some

Comesamination.-If I told him that | wards Jennertown, but cannot say wheth-I could not recognize the men it was er they were the same tracks that I saw because I did not deem it wise nor pro- coming over the bottom or not; would client to do so.

Nonh Marks. - Live in Ligonier; at the Umberger sale; was in the blacktion with him after the murder of Um- house; found an old pair of gam boots ruary. horger, in my store; he told me that he there. (This was objected to by the had seen two mon go up the mountain Commonwealth as being too remote. that night, but could not tell who they (Dijection sustained.) Live in Jenner-

to the barber shop, on Saturday previous | were in the gang with me; the evening | quainted with every road in it.

February met Lewis Belven and Ed. much or not; I drave in a buggy from bood of Ligonier and where the Nicelys McCracken on this side of Ligonier; I Countryman's; the impression of live.] most them with a carriage; saw McCrack- the boots or shoes was not frozen Hampton Smith.-Know Gilbert Ross; on afterwards on the 12th of March; he very much the next morning talked with blurafter the arrest; he said that he was about my size with light or | middle of the beel; they were in the | Adjourned to 7:00 p. m. sandy monstache and hair and light cone centre and diamond shape; they were plexion; heard him say this in Mr. plainly noticeable on the leather boot

Cross-examined Am no relation of pike as far as the Harris farm; I measdefendants; went down to see McCrack- used the three tracks; I measured the en on the 4th of March; did not offer leather tracks twice and the gum

theorge Nicely, re-called-Heard him case on my own book; thought I had as son was along. mor at Mr. Coffroth's office on the day much right as any one to do so; have of the hearing that the man be met on | met Beegel; met him in Jennertown, met the mountain was about the size of him at the Somerst House in Somerset; Mclivain, with a heavy moustache, light | have met Gastiger at Jennertown; met or sandy in color, light hair and fair him once in Stoyestown and met him at mony in regard to the survey of ground at

Cross-examined-life did not say I saw | was working for the reward when I starta man but never saw him before, and ed out. when asked to give a description of him Re-direct-I understood that the Comsay that he could not answer antil he went | monwealth | had offered \$25,000; I to the jail and saw the prisoners; do not | thought I would get it down fise and know that he went to the jail and came keep it to myself; none of the Nicely's back and said that be could be of no use; said anything to me about it; nobody of do not think he said anything when he the defense spoke to me about it; I

was subprenaed by Coffroth.

my return from the hearing made an ex- Commonwealth : did not speak to anytion, Nicely and I went down the hill and paper offering reward. the other parties with us stood up on Re-direct-Cannot tell on what day I road, when they were in the middle of think it was on Tuesday or Wednesday the road could see about 1 of their bodies; of last week; I read the advertisement when they were at the bottom of the in the papers; I think I read it in the to that effect, Sand Flat could only see their heads and HEERLD. port of their shoulders; could not recog- When Mr. Hay had left the stand acquainted with the roads around Ligo were found in packetbook; also offered

two descendants; am not thicker with them | would rest and the Commonwealth be- middle of the last ali. than I think 1 should be; I go more gan their case

Noah Marks-Have lived in Ligonier David Bran.-Live in Ligonier town-Valley all my life ; [witness was shown ship, Westmoreland county ; am a farmthe map referred to above and said be er; am acquainted with David Geeting; to look at the tracks; I stooped down to ex-

William Rinkle-Live in the Ligonier were arrested; he was working on a saw- nails in the gum boots. Valley about 200 yards from the Somer- mill on my farm; he told me be had not | Fimer Snyder-Live in Jenner township he roads and locations to the jury]; on this case. Friday after the murder I was at Jenner | Cross-examined-I asked him if he stopped at the Sand Flats on my way nier township; um a farmer; I asked on the olke and went down to where them; he said what ver they want they of his lace. the timber was cut; I went down to see can get out of me either here or over and satisfy my own mind as to whether there; what I know can do the Nicelys any one could be recognized passing up no good; this was probably a couple of the 18th of March; came back on Monday the pike; I could see the top of her head weeks after the arrest; have known Auron just; they sent for me to come. in some places and other places could Marks 20 years; seen him in Liganier the not see her at all; I could not meognize day Nicelys were arrested; went home her walking along the road; she stood in together; it was before I knew of the arthe middle of the pike; I know where the rest; he will be couldn't tell when he had

Sand Flat is; it is about 50 yards long. | seen the Nicely boys before the murder Cross-examined-I would call the Sand | but shat he had talked with Joe for an Flat about 50 yards long; it is about 136 hour on Thursday after the murder; I sarsk between the two hills; my wife is saw Marks on 15th day of May; he told middling size; she is not present here; I me then he wasn't going to swear, and shood her right on the flat; the pike may couldn't swear that he had seen Joe on be 40 feet wide; there are a good many Wednesday; this was in the presence of

because ID and II o'clock in the morn- because trees cut after I was there. | not steal a goose from his father-in-law,

ness was shown the gum and the leather

ing ; Louwes down further and Charley Cross-examination Bown at Laugh- take it home and wake my wife up and salled to him; I looked up toward the limitown heard some one say that Vancer cook it. when I started to go; I couldn't should have seen the met passing there. Wm. McHezine-Live in Ligonier recognize anyone from where I was and I thought that I would go up and township; am a farmer; am a brother-inculess I knew them very well and they see if they could be seen from that point. | law of Joseph Nicely know Anton Marks; som i stop and took down; I was travel- J. A. Keylor-Live in Jennertown; he told me he did not see Joe Nicely went along to help search for tracks the Weshesday 27th February, day of Um-

thus McCracken-Live in Liponier; morning after the Umberger murder; berger marder, but was on Thursday be temember 2 th of February; was work- started from Jennertown in the morning; saw him; this was on 6th March after our for Charles Vaneer; remember where the first tracks we saw were at the road arrest; said he couldn't swear it was on "Call Hamilton was arrested; he lived that leads off the pike down to Fried- the 27th because he knew it was on the of the land at the hemlock, shown me nertown; remember Jos Nicely coming to Cross-examined-I couldn't be mistak-

BEDOUT STEAL A COURSE

Cross-examined-We have had no dif-

ficulties; no law suit; they did not have

occurs but don't think I am mistakan

Neah Shaulis-Know Aaron Marks; after the arrest of the Nicelys; I said Joe the day of the Umberger murder. Benjamin Doeds, Esq.,-Live in Ligo-

nier township, Westmoreland county; ama farmer; was Justice of the Peace out am not now; know Aaron Marks; I could see him about the same as at the he told me two or three days after the arrest of the Nicelys that he couldn't tell when he had seen them last; know John north side of the road. Koontz: own a farm near Joe Nicely's; tom about 2 o'clock Wednesday.

he came to my place after the arrest of the same at Mr. Rauch.] saw Joe Nicely on Wednesday, February

Joseph Deeds.-Live in Ligorier towntracks coming down from Umberger's tonot know where the Nicelys were on the | Nonh Serena-Know David not say they were the same tracks; was

Cross-examined-I asked him if he had heard anything of Nicely boys; said he did not: that they could be cleared were; Less Vaneer said nothing to me. town and am in the furniture and under-Cross-examination. It was before the taking business; on the night of the boy had seen him that night, but that he morder was down at George Coun- did not see him that afternoon.

J. M. Hamilton.-Live in Ligoneer; tryman's; got home between 10 and 11 I.B. Matthews.--Am acquainted with have the Vanser; he told me that he o'clock that night; went out the next Gilbert Ross; had a conversation with commission on the day of the murder and | 8 and 9 o'clock; went towards Umberg- | he was at Joe Nicely's home till a little | and 1 took the hat down; the lamp was was two men poss but they were too far er's; went on to the Umberger hill; it is after 12 o'clock that day, and could clear taken out of the setting room into the kitchabout a mile and one-half; Rufus Rauch | him that far and no farther; have lived | en. Cross examination.-He told me this and Albert Hay and Mr. Shanlis in the Lagonier valley 47 years; am ac-

IMap shown to witness and he exof the 27th of February was damp and W. M. McDrain, Jr., -On the 27th of foggy; could not tell whether it froze plains to jury about reads in neighbor-

EVENTNO STREET, is not good. the neighborhood.

Charles Vancer Recalled -- Know Gilbert Ross; had conversation with him after the center of the heel; and testify about passing a man on the bottom in the Friedline or Picking field; arrest; he told me he left Joe's between 12 mountain; simply offered him a drink there were at least four men ahead of me and I o'chek on February 27. Witness dethe hearing by the Nicely's, but was not some have been up to Somerset a couple by the defense. I pointed out the log on the witnesses were at Coffeath's office. have been hunting up evidence in this Rauch and Mr. Critchi-id yesterday; my

> Lewis Vancer-Wav along with my father log that we sawed on February 27th. The defense objected to admitting testi-

his own house; in working up this case; til this morning. week; know Lewis Palne; he told me that

he was called to prove that he had seen Dave Nicely on the 27th of February, but that in fact he had not seen him: Clinton McMillan-Son of the Sheriff; counsel offered to prove by this witness that | ties say so. Wu. N. Nicoly-Testified to the same | Cross-examined-I think the reward | Dave Nicher was eating things to keep him

Needy, and said, I live in Ligothier; on thought the reward was offered by the ruled that the evidence was not admissible. against the partition; I examined it; there verneity was not good, the road; we told them to go along the was subpensed; it was last week; I in it at that time across the hole; was along the was subpensed; it was last week; I in it at that time across the hole; was along the was committed and a tall man resembling these; further for the great effort he was to make life has been taken. to aid Mr. Nicely's when we got the money; and veracity is bail be said "you must not think hard of me

Cross-examination-Was at the door on was bad.

Albert Hoffman-Followed the tracks: it must be bad. hearing before Judge Baer. After this snow,

Cross-examined-Am a consin of the had been done they announced that they | Cross-examined-Saw no marks in the there was no mark made on the tracks by nails in the middle of the leed; there wer

mails on the side of the heel. recognitioned it a correct representation.] met him on the day after the Nicely boys amine the tracks; there was no marks of

et esunty line; [witness was shown the seen Joe Nicely on the 27th of February drove over to the hearing from Umberger; map referred to above and pointed out and could not clear these boys out of to Squire Ranch's in a carriage with Wm. Thomas, Ella Stearn and Nannie Horner: Thomas and I sat on the front seat; Cross Reads; left there and went to the couldn't clear these boys out of Thomas asked Ella Stearn what kind of toll gate; that is near the place that Col. that scrape and he said that he looking men they were; she said one was Hamilton lives; he was arrested that couldn't, that he had not seen them, tall and the other was short; one had on a day; stayed all night at the toll gate and Isaac Serena - Know John Koontz, lives | cup and the other a hat; said they had on left for Laughtinstown Saturday morning: in Westmoreland county : I live in Ligowore; he had on a sort of a rough, grayish us; my wife was with me; I stood her John Koontz whether he could clear tach; she did not see his forehead or moustine nike and went down to where them he said what we there want then did not say anything about the color

Cross-examined-Was living about two miles west of Jennertown; went West on Adjourned to \$30 a.m., Thursday,

General Coffroth will sum up for the de- as their first witness fense this morning and will be followed by Hon, John Cessus on part of the Commontreesent down there; went to the near Jacob Robinson; I met him again on last of the morning's session will be cosumed band's hat; I had laid down on the bed;

John W. Knowty-On Mondaymorning, was standing and the middle of the flat Wednesday; he and well I'm told it don't last evening they were taken took to prison from where I was standing and the middle of the flat Wednesday; he and well I'm told it don't last evening they were taken took to prison from where I was standing and the middle of the flat I chronity lath, I went over the mount there was some hunel, heating, small make my difference; I said we are neigh- by sheriff McMillen, they reaked baggard, hat; Lurenzo got it and gave it to them; tain; stopped at Sand Flat where the timber and brosh; could not see any- bors and if you say that you know I will saxtons and nervous. The intense interest i meither Easte nor Ambrose came in from two Universe were at work asked Charley thing up at that end of the flat; my wife inve to go and contradict you; he said taken by the general public in the case has where they were they couldn't see where the

clay us the end draws near. Mr. Knower opened the case this afternoon | Lorento Nicely-Remember of John Rauch on part of the prosecution in a speech of an | and Ambrose coming to our house the night cor and forly minutes to length. His ar- my father was arrested; they came in the unients were clear, foreible, convincing and kitchen door at the east side of the house; gical. We give below a very brief synop- the lamp was in the sitting room in the

He was followed by Mr. Koontz, who, in Rauch just stepped in the kitchen door; I the two hours and thirty-seven minutes that | asked mother where the hat was she told he stoke, made a strong and elegment plea me and I went and got it for them; there or the lives of his clients.

We regret that we are unable to give both through the dining room door; Ambrose Henry Rauch, recalledgiven by the Commonwealth) made a survey

mountain walking fast; I asked them wants Umberger's; from there we could Wednesday and Thursday both; I am 72 it was seven and three tenth rods from the don't know whether there was anybody butt of the log to the center of road, at point | with him ; saw him right after dinner No. 2 on the draft, the eastern line is 74 100 yards; the elevation of the pike is 30 feet. between that and February. and a conversation with him in Ligonier Mr. Critchfield walked on the pike and I stood at the butt of the tree at point No. I; people say you saw the Nicely boys or could see him as far as the waist when he for defense said their case was made up and one of them on the evening of 27th Feb- was in the center of the wood and down be- they would rest. Judge Baer said that in reary ; he said no i did't see them and low the hips when he came nearer; as he can't help them; he said he didn't see | walked along the view was obscured by the foliage; at points N. 2, 1 could see his head and shoulders at the center of the pike and down to the lower part of his waist when he came nearer to me at the edge; could see him moving along to the point No. 3, where

point marked No. 2.

that he was not going to swear that he did not notice my spruce or hemlock; saw read the following some birch and base; stepped the pike; it was eight paces wide; [The survey war then offered in evidence.]

ship; am acquainted with John Koontz; of February for Mr. Vaneer; I was where on evening of arrest of the Nicelys had a they were sawing the tree; left them there; enversation with him; he said he did could see any person passing along the pike 27th; saw him next morning; he then | worked with him February 25 at Mr. Kimtold me he didn't know where either of mel's sawing wood; was sawing with a cirknow Charlie Varneer; had a conversal smith shop across the road from their the Nicely boys were on the 27th of Feb- cularsaw; he was handling wood all day, ing cuttor stove wood.

eight inches through and four to six feet long; others were smaller. John Rauch-There was no wire or steel rim on the but when I got it; it is a little more worn than when I got it on account of the number of times it has been handled, Cross-examined-Took the hat from the and his tather were sawing a cut up the morning to look for the tracks between | him after the arrest of the Nicelys; said | wall myself; Lorenzo brought in the lamp

Cross-examined -Some pieces were aix or

and Shaffer when we got the passbook from Joe Nicely; was present when the pass books were found at Joe Nicely's: I found them in the bookcase; we all examined them; there was no money in any of them; was at David Nicely's on the day of the arrest; neard Mrs. Nicely say she could not account for his whereabouts anywhere quittal. Affirmed. told me that he and Beener met a man when I went out; the soft he had been at Joe Nicely's the day of during the week except on Friday; and, I on the mountain; that he was a little condition of the snow early in the the murder with a load of coal, in the think perhaps Monday; had conversation. benyier than myself with sandy hair and evening would prevent anything like a neighborhood of 12 o'clock, and could consequence of the evine with which the deheavy nonstache and fair Somplexion; mail track remaing in it; I measured three clear him up that far but no farther. the day of the arrest; took all the pass books; fendants are charged, and must show by -Know Gilbert Ross; there was no money in any of them when I proof beyond a reasonable doubt, not only sponsible they would ever recollect their

books were got; Martin O'Connor found is a reasonable doubt of the commission of the counsel for the defense that the books were got: Martin O'Connor found the crime by the defendants, then the very the counsel for the defense that the the careful to observe the evidence and the murder, must find and ascertain whether the counsel for the defense that the burden of the proof was on the Common-dict must be not guilty. Affirmed.

Mr. Kooser was followed by Mr. Koontz law, the result or conclusion be arrived in the murder in the first or in the second who spoke until six o'clock, when court Philip Walker - Know John Taylor; ey is any of them; examined the tracks to plainly noticeable on the leather boot tracks; clear up the boltoms; went up the tracks; clear up the boltoms; went up the character for truth and veracity and frame tracks; clear up the boltoms; went up the character for truth and veracity and frame tracks; clear up the boltoms; went up the character for truth and veracity and frame tracks; clear up the boltoms; went up the more tracks closely; there were nails Cross-examination - Kverylady says so in around the outer edges of the heeis; there character as would enable the jury to say defined what was meant by a reasonable | Court convened at half-past seven o'- and the proven facts should be the ver-

Cross-examined-Left Reach and Joe room and left them together. the hearing by the Nicely's, but was not some have been up to Somerset a couple of times; have not been up a dozen times; mountain that I was sawing to Squire of times; have not been up a dozen times; mountain that I was sawing to Squire of February, 1889, the day the morder is all a lifetime, some \$15,000 or \$20,000 in his to be

gresterday and pointed out the burt of the time of Havid Nicely's arrest; Mrs. Nicely there can be no conviction of Joseph Nicely. said she did not know where her bushand Affirmed. was between Monday and Friday.

but she could not say where else he was during the balance of the week until | then there can be no conviction of David | Friday; she did not say he was at home Nicely. Affirmed. every night during the week; the conversa- 8. That as the theory of the Commontion was shortly after the arrest.

know Joseph and Dave Nicely; have frequently been sent errands by them. The control of control to prove by this witnesses showing that the defendants were ed. Charles and Lewis Vaneer who have been a killing with maker of the being fatigued after more than a week pathy for the bereaved ones nity for the bereaved ones

conversation as given above by ties. was for the murderers and the money; I sick, the defense objected and the court that his standing for truth and veracity in have committed the crime, enures to the amination of the ground at Sand Flat; one about it; saw advertisement in the Rauch got the but; the but was hanging people say that his character for truth and charging on an alibi,

> Edward Mowry-Know John Kaylor; because I lied about the money," or words day; I suppose about 7 o'clock; heard sev- offense. Affirmed.

eral parties say that his reputation for truth the outside when I examined the hat; a boy | Aaron Walker - Live in Jenner township;

nier suiley ; witness was shown a map stenographer's notes of jestimony of Mrs. there were no marks made in the middle of Cross-examined.—Heard his own brother- guilt of defendants. Affirmed. and asked to point out the various roads | Umberger taken at the holes corpus the head by nails; the tracks were made in in-law say he didn't tell the truth, Joseph |

Solomon Judy. - Live in Jennertown: had; know all his neighbors and the people | quittal. Affirmed. of the community.

say be was a bad man; Aaron Walker sub- in the case, that doubt must inure to the Daniel Peterson.-Live in Jennertown;

Benjamin Kline.-Live in Jenner township, one mile from Jennertown; John Kay-

Kaylor and his reputation for truth among the people; it is not good. they would call him that if they called him Affirmed.

Jacob F. Kautz-Live in Jennertown; John Kaylor's character for truth is bad. Cross-examined-I am of the firm of Kautz Boom; have heard Mr. Judy, Mr. Peterson and Mr. Rauch's family say it was

snid Mr. Cessna, as witness Kautz left the

called Harriet Nicely, wife of Joseph Nicely. Mr. Koontz submitted a brief of authori-IN SUR MESUTTAL

it was a large lamp. north end of the room; I opened the door; was no light in the kitchen only what shone

stood on the outside. (The court ruled that testimony in regard | had a lantern; I think Kanch; Ambrose to the survey of land at Sand Flat could be stood at the edge of the door on the outside. Daniel Peterson-Lived but May in Jenby the Vancers day before yesterday; the seeme in August; am director of Westmoresame surement was made by myself and N. land Insurance Company; Mr. Nicely came B. Critchfield: the two Vaneers were along; there to see me about a case in Greensburg; Cross-examined-Don't know whether he rods and western line ten and four-tenth had any other business; there is a mail rods; the length of the flat is about 90 to from Ligonier; saw him again at Ligonier

> arguing the case to the jury counsel would not be limited as to time. Two officers were called and sworn; the

jury was given into their keeping and ney. court adjourned till 1:30 p. m.

For the first time during the two weeks Judge Baer was not in his seat at the hour appointed for opening court this afternoon. Cross-examination - The butt is on the It was precisely 20 minutes of 2 o'clock, (by closing, on account of indisposition. Whilst tial farmers in the valley, to whom they the clock in the court room) when his Hon- calling to his assistance private counsel, the N. B. Critchildid-Was along with 'Squire or walked in and took his seat on the bench | District Attorney acts as a quosi judicial offi John Koontz teld me he saw Joe Nice- Rauch and helped to make the measure- and one of the last sessions for the trial of cer, and under the law they act under his testimony on the stand; how all of ly coming up through a field in my botments; Mr. Ranch walked along the road | ociebrated Umberger murder case was forments; Mr. Ranch walked along the road | ociebrated Umberger murder case was forments; Mr. Ranch walked along the road | ociebrated Umberger murder case was forments; Mr. Ranch walked along the road | ociebrated Umberger murder case was forments. while I stood at the butt of the hemiock mally opened. After ascertaining that there der the law to make the closing argument, the 28th they saw the defendants and Jacob Roberts-Know Aaron Marks; tree [The witness then testified practically were no motions for the continuance of any and there is no law preventing his yielding not Wednesday the 27th, and how \$15; of the cases on the calendar his Hon- this right to private counsel; but the private 000 or \$20,000 in money could be used as the Niceleys to find out what day Joe | Cross-examined-The trees between the or announced that he was ready to hear counsel representing him in the closing ar- an engine to manipulate the character of had bought corn from me; told me then point where I stood on the pike are large; from the defense. Mr. Koontz arose and gument must be bound by the same rules as witnesses. He then paid his respects to and unaffected by public clamor, private dwelling by night for the purpose of

Thes. Sinclair-Was working on the 27th | give them here as they were Refused or Affirmed by the Court.

COMMONWRALTH JOSEPH AND DAVID NICELY. The Court is respectfully asked to instruthe jury as matter of law as follows:

1. That the defendants are presumed to be nnocent of the crime with which they are | the case. charged, and this presumption must stand until it is overthrown by evidence on part | behalf of the Commonwealth. of the Commonwealth, which establishes the guilt of the defendants beyond a reasonable

they cannot say they feel an abiding connection to a moral certainty of the truth of the charge. Affirmed. 3. That the charge in this case is that the

sfendants are guilty of murder in the first legree, the Commonwealth is held to a more rigid compliance with the rule that the guilt of the accused must be established beyond a reasonable doubt, and if the jury, upon a 4. That it is the duty of the Common

wealth in this case to make out every essenthat the man and that he said that he did not know the man; I cause the man and John Rauch of the measurements are the parties who find a verificit in accordance with this historical case. He statute regulating the defendants are the parties who in the day of the hat was got; was present when the post of the statute regulating the defendants are the parties who in the day of the find a verificit in accordance with this historical case. He law as fail down by the Court, and in the second degree is where a desidence in the tirst degree is where a desidence in the tirst degree is where a desidence in the consider them in connection with this historical case. He law as fail down by the Court, and in the second degree is where a desidence in the tirst degree is where a desidence in the tirst degree is where a desidence in the consider them in connection with this historical case. He law as fail down by the Court, and in the second degree is where a desidence in the tirst degree is where a desidence in the consider them in connection with this historical case. He law as fail down by the Court, and in the crime of the first degree is where a desidence in the tirst degree is where a desidence in the tirs

identity of the defendants is not of such a was a reasonable doubt of their guilt; was no diamond shaped impression in the beyond a resonable doubt. Refused,

Nicely down stairs when O'Connor and I Gilbert Ross, Aaron Marks, John Koontz, then adverted to the testimony; began ed till half-past eight o'clock Friday verdict contrary to, or in defiance of, the tration of, or an attempt to perpetrate went up stairs to search; was out of the David A. Geeting, A. A. Nicely, Eliza Nice- by picturing the peaceful scenes at the morning. Hammer Cauffield-Made examination of Nicely and Harriet Nicely, that Joseph Nice February; farmer Umberger, old there was no diamond shaped nail track in leged to have been committed, from 12 house; with his wife and grand child to be the country of the new factors are the country of the new factors and the country of the new factors are the new factors are the country of the new factors are the country of the new factors are the new facto the center of the heel; heard conversation at o'clock, noon, until next morning, then and servant gathered around the even-

from 3 o'clock p. m., until next morning,

wealth is that the defendants were seen go- Beener and McCracken who first saw John Thomas Know John Kaylor; know ing together gast up the mountain on the some other party cross the road and pass the community in which he lives; his genthe afternoon of Wednesday, the 27th of into the woods; these witnesses say it Michael Sipe—Know John Kaylor; know of the alleged murder that they could not David and Joseph Nicely. Dave with a David and Joseph Nicely. have committed the crime, enures to the benefit of both defendants in the case. This benefit of both defendants in the case. This

9. That the defense of an alibi is, when a Friedline who says there was a short man ing i esh, vigorous and fully prepared and security have been invaded and a one of our ablest judges, held that: "He led, he was elsewhere, and that he could not on at the hill above Umberger's is found during the day. Cross-examined—Was subparated yester—In the nature of things have committed the

size any one; was standing at the first counsel for the defendants offered in was holding a handkerchief inside at the know John Kaylor; know his general reputo intend the hat; a boy and was holding a handkerchief inside at the know John Kaylor; know his general reputo intend the death which is probable

11. That if the evidence of an alihi, together with the evidence in the case, raise a reasonable doubt in the minds of the jury then the defendants are entitled to an arc. Therefore, gentlement, if the offense between the presument to a from a bad heart. Therefore, gentlement, if the offense between the presument to a from a bad heart. Therefore, gentlement, if the offense between the presument to a from a bad heart. John Kaylor's character for truth is pretty then the defendants are entitled to an ac-

12. If from all the evidence the jury have Gross-examined.—Heard Kautz's boys, a reasonable doubt as to the guilt of either Friedline, Peterson, and a good many others of the defendants, then under the evidence

benefit of both defendants. Refused. 13. If the jury believe that David Nicely know John Kaylor; know the people of the was in such a state of health, either from surgements; his character for truth among heart disease or other disability, as to incapacitate him from walking from his home to table, indicating that the lamp had been were more than satisfied. It was a grand was committed. the residence of Herman Umberger, a dis- used to find the pocketbook that had fal- speech by a grand old mantance of about fifteen quiles, within the time | len from the inside of the open vest of lor's reputation is bad, not just for one but and at the rate of speed, testified to by the Herman Umberger before he was struck witnesses in behalf of the Commonwealth. by the fatal bullet. He then pointed out Prank Heiple.—Live in Jenner township : or if the evidence of his physical disability that at least half an hours time was spent all-mile from Jennertown; know John is such as to raise a reasonable doubt in the minds of the jury as to his connection with the murder of Herman Umberger, then commenced operations, during which Cross-examined—He is an undertaker; there can be no conviction of David Nicely.

> 14. If the jury believe that David Nicely could not by reason of physical disability

sustaining the position he had taken in his Harriet Nicely-Was at home the night points. His colleague, Mr. Ruppel, made

IT BULLIN'T WILL. Caffroth addressed the Court on this question and any other reasons for making this somewhat extraordinary application. District Attorney Biesecker, said he had been any of the processing the law of the law of the processing the law of t a close attendance upon the court for centre-fire corridges that Joe Nicely stal evidence. physical impossibility for him to make any presence of Ambrows, had taken the but law as he gives it to you. the closing argument. Following is the motion made:

Commonwealth Joseph Nicely

David Nicely. As Daniel Peterson left the stand counsel

COFFROM & RUPPEL.

The Court rules as fallows The District Attorney waives his right to had told stories at variance with their a quasi judicial officer, and as such can press | the Nicely family and insisted that the for conviction as far, but no farther than the awful pressure of the death penalty to (The points submitted were ruled upon by | District Attorney. So far as his duties in ar-In or out of court before you were sworn as jurges are concerned, they must be in concerned, they must be in concerned the jury. We guing are concerned, they must be in concerned the jury. We guing are concerned, they must be in concerned the jury. We guing are concerned they must be in concerned the jury as jury and this case, and that you act as upon his person at a vital part, and his should be a fair illustration of the theory swer to the arguments of the defense and manded to know why brother-in-law the evidence. For on these and these if the evidence is believed, not something new that the defense may be Barron was not put upon the stand when alone can a true verdict be based. depried from answering. This is the rule David had testified that he was at Barthat applies to the District Attorney and must ron's on the 27th. He then argued that law and the evidence would be a verdict, and the defense do not deny that I me also apply to private counsel employed in the physician had not said that Dave

Mr. Kooser then went to the jury on

Mr. Kooser began by congratulating 2. That a reasonable doubt is that of the the jurors and himself that the labors of ase which after the entire comparison and several weeks were drawing to a close; consideration of all the evidence, leaves the yet he must task the jury to include him minds of the jurors in that condition that and others patiently awhile longer; congratulated the defense and the commonwealth that they had succeeded in securing twelve jurors of a high decree of intelligence, of undoubted courage, who would be able to render a verdiet under the evidence and charge of the Court; he agreed with the counsel for defense in his opening, when he statcomparison of all the evidence, believe that ed it was an important trial-perhaps the there is reasonable doubt of the guilt of the most important ever tried in the county; defendants, then they are entitled to an ac- that the name of Umberger was now known all over the land, because of the peculiar brutality of the murder, and the magnitude of the sum of money secured while their duties were grave and redict must be not guilty. Affirmed.

5. That the evidence of Ella Stearn, Nanwealth throughout the trial, and that the who spoke until six o'clock, when court at should not disturb, him, whatdegree. The 74th section of the statute ly, Ella Menoher, Hetty Nicely, Lorenzo house on the twenty-seventh of ing lamp; no thought of the assassin 7. That if the jury believe the testimony scene to Ligonier, Hamilton Smith a before in time to start for the attendance was less than it has been Cross-examination—I asked her where of Sarah Barron, Hetty Nicely, Lewis Payne witness, saw David Nicely wearing a gray ward beyond the point at which he should have turned off to get to his seats immediately in front of the bench home; found him next upon the moun- and facing the jury. Their appearance tain where he is identified by witnesses at their homes, so far distant from the scene knew both parties well and say they were of ceaseless work and worry. sick, the defense objected and the court ruled that the evidence was not admissible.

In this standing for buth and versely in the case. This is neighborhood is not good.

In this standing for buth defendants in the case. This is neighborhood is not good.

Cross-examined—Have heard agreet many is answered by the general charge, when show ing the great strain they had been the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the existence of the laws of God have been ruthlessly violently infer the exis

in this house by these people before they

Elia Stearn and Nannie Horner mendable attention listened to the testi- being and in the peace of the Commonevery opportunity to carefully accutinize mony as detailed by the witnesses of both wealth, on the 27th day of February and Nannie Horner, Dr. Walker and Henry the dress, form, features, shape, etc., of the Commonwealth and the prisoners at last, and was then killed. If you find litauch. have made the journey necessary to commit the dress, form, readers, snape, etc., of the men. Next took up their clothing the bar, and have, I am sure, given due this to be so, the next question is, who the inquiry you make does not take the apeed testified to by the Commonwealth's witsees, or if the evidence creates a reasonable with which Ella Stearn identified the learned counsel on the material facts in the offense upon the prisoners at the bar. ants kill blue? doubt in the minds of the jury as to his hat, with a piece out of the rim, the gray evidence. connection with the crime, then, as the overcoat, the leather boots and the gum The facts you take from the evidence wealth to satisfy you beyond a reason- at the bar as the men? theory of the Commonwealth is that the de-boots. How Nannie Horner identified as given by the witnesses on the stand, able doubt, by evidence produced, that The evidence is so voluminous I can only fendants were both present and jointly com- the same articles and in addition locat- The arguments of the counsel do not the prisoners killed him; and must also call your attention to the material substance mitted the crime the verdict must be ed the brown patch on the gray over- make facts; but they are a discussion of by like proof, show that they killed him of it as given by each witness, leaving you David Nicely for the murder of Herman Judge Baer, addressing the counsel for the not guilty as to both of the defendants. Rearrest the singular fact that whilst Dave credibility of it as bearing upon the guilt ed or implied, in order to convict of the evidence whether the prisoners com-Nicely was the tall man and Joe the or innocence of the prisoners, and are the offense ties and made an argument to the Court short one, that the gray overcoat with entitled to due consideration; neverthethe brown patch, worn by the tall man, less, the jury cannot surrender its own Every killing is not necessarily mur. waw two parsons cater the house at might. wealth. It is more than probable that all Ranch and Ambrose came to get my husof the morning's session will be cosumed band's hat; I had laid down on the bed;

Mesers. Kooser and Cessua replied for the

Mesers. Kooser and Cessua replied for the college, that the foll talk bands that the relative probable that all facts and adopt the views of counsel. Domicide. was found at Dave Nicely's and the hat judgment fairly formed on all the mates der-but every killing of man by man is sit down at the store for a while, and after of the morning's session will be cosumed band's fitter that was cut: I suppose it was Sabbath a week: I told him I heard he by counselin summing up and that Judge they rapped at the door and I told Lorenzo Commonwealth. The Court directed the summing up and that Judge they rapped at the door and I told Lorenzo Commonwealth. The counselin summing up and that Judge they rapped at the door and I told Lorenzo Commonwealth. The solemnity with which you were

of his pocket. He then printed you Counsel by defense made an application out the first that whilst Umberger | You were sworn to well and trule by and the persons who committed it, then n writing in the court asking that the Dis- was about to have been killed and true deliverance make between the can be a finding of number of the first trict Attorney be ordered and directed to low a halfest from a 42 culibre revolver. Commonwealth of Bennsylvania, and degree, or murder of this second degree make the classing argument in the case on centre fire, no recoiver of centre fire was the prisoners you like in charge, and a or manufampiter. the part of the Commonwealth. General found in Joe Nicely's possession, yet at frue vendet give according to the law. The distinguishing criterian of murales

the past two weeks and was sick and worn must have had a centre-fire revolver that The law, you receive from the Court, homicide to constitute either murder out. His appearance, as he addressed the was conceased somewhere with the and as to it the Judge is responsible and or manulaughter. The distinction has court, showed clearly that it would be a money; he then told how Rauch, in the alone responsible if you act upon the tween the two grades is, that an unlaw-

to speak for them; told how these men the evidence in the case. were contradicted by numerous substan-

doctor might perchance know more about severe.

velopments over the heart of Joe Nicely

as Dr. Brubaker seemed to think. He

and around that Paint, Marks, Koontz and

that for the interests of the 35,000 to 40,-

000 inhabitants of this county whose in-

whilst to give the prisoners the benefit

dence satisfied them beyond a reasona-

the case having been discharged the day total disregard of public sentiment or murder in the first or second degree. that lurked about; he then shifted the before in time to start for their homes, feeling. was working for Kimmel on Monday, at his home on the 27th of February, 1880, did not indicate that they had had a re- God, but openly and boldly served the trate a robbery or a burglarly in orfreshing night's sleep, and their greeting devil and imbued their hands in his der to constitute murder in the first deto their wives and aged parents was silent blood at the hazard of their souls. and sad. Their counsel, Messra Coffroth.

who recognized them and says new are under, but "your Uncle John" was look- lated. The rights of personal liberty be warranted in so doing. Judge Agnew.

In the nature of things have commuted the offense. Affirmed.

In the nature of things have commuted the offense. Affirmed.

In the nature of things have commuted the offense of the offense of things have commuted the offense of things have commuted the offense of things have commuted the offense of the offense of the offense of the offense of things have commuted the offense of the offense of the offense of the offense of In criminal cases, but rests upon the Com- tance and had brought his lunch with ling session; his argument was foreible, offenders. Whatever the offense may be to know that his blow was likely to kill, in criminal cases, but rests upon the commonwealth throughout, so that a conviction him. This was corroborated by the track logical and argumentative and was listfound to be, if the prisoners are not the and knowing this be most be presumed. convinced, upon a comparison of all the testimony, beyond a reasonable doubt of the testimony, beyond a reasonable doubt of the law must be maintained and the death which is production of the search for three hours and 32 minutes. John ty of the law must be maintained and the death which is production of the search for three hours and 32 minutes. John ty of the law must be maintained and the death which is production of the search for three hours and 32 minutes. warrant, the sudden demand, "Your Cessua, Esq., made the closing argument crime punished. money or your life," the sudden firing of for the Commonwesith. He spoke for The indictment charges the prisoners without a sufficient cause of provocation ing the bell to alarm the neighbors, the aling of facts ever heard in a Somerset proved, would sustain a conviction for Therefore, gentlemen of the jury, he plunging forward of Herman Umberger county court, it was a speech besitting the murder of the first degree, murder of the who takes the life of another with a from the sitting room into the kitchen, high reputation of Mr. Cessna and the second degree or manslaughter, as the deadly weapon and with a manifest dedead at the feet of his wife, and the importance of the cause for which he facts and circumstances in the case sign thus to use it upon him, with suffiflight of the prisoners. He then point- pleaded. The court room was crowded might warranted out that after their flight a lamp stood with friends and admirers of the justly It becomes necessary, therefore, to deupon the table without a chimney and celebrated lawyer, all of whom were eas fine the several offenses or grades of of. perpetrate a robbery or burglary is guilty the broken fragments of the chimney lay | ger to hear him in one of the greatest ef- | fenses, so you may not err in the concin- | of murder in the first degree. All murupon the floor five to ten feet from the forts of his long and bosy life. They sion you arrive at, if you find an offense der not of the first degree is necessarily

> JUDGE BARR'S CHAMPE TO THE JURY. Gentlemen of the Jucy :

A long and necessarily tedious trial is aforethought, expressed or implied.

protested effort or argument. While the from a nail at Joe Nicely's house, and the The evidence is wholly for your conspressed or implied, is marries; whereas unsel for the prisoners disclaimed that piece was then out of it; then told how sideration, and from the material evi- an analysed homicide without a disclaimed that Cross examined. There was no lamp only such was their desire or intention, the re- the position of the defense concede I that dence in the case, as given by credible of orthogold is manufacilities. the one in the sitting room; one of the men suit of a favorable ruling on their motion the pocketbook was Umberger's, and described witnesses, you are to find the facts, and Keeping this distinction in mind, you on the part of the Court would have been to nied that there could have been any me- you alone are re-possible for a true and inquire whether the offense committee prevent the "Grand Old Man," Hon. John five in the world for anybody to commit faithful finding of the facts. I repeat, was murder or manslaughter. Murder Cassna, from arguing the case or going to the fixed the world for anybody to commit faithful finding of the facts. I repeat, was murder or manslaughter. Murder jury, as it had been agreed before the morn-law embraces cases. ing adjournment that there should only be pelled to urge; showed how Thomas and the evidence produced in the case, where no intent to kill existed but two specches on each side. The Court over- could not say it was, or was not the pock- You are not responsible for the law laid where the state or frame of mind ruled the motion and Mr. Cessna will make etbook; how brother-in-law Menoher down, nor for the facts established by termed malice, in its legal sense. was able to say it was not the pocket- the testimony. If the evidence lead the prevailed; and it includes all unlawful book, and that brother-in-law Menoher jury, in the exercise of a sound judgment, killing under circumstances of depravity could not ask to be believed by a jury, to a verdict of guilty there it is your duty of heart and a desperation of mind re-No. 2. May Term.
1889. Over and the money, and concealed the knowledge consequences f. flow. You, as jurors, intention to kill exists.

Murder, of the money from the officers, and adhave nothing to do with the consequences. I have atready said because he had securated the book and to go without stopping to inquire what gardless of social duty, but where of the money from the officers, and ad- have nothing to do with the consequen- I have atready said the distin-And now to-wit: June 6th, 1889, the evi- mitted afterwards that he had fied about ces, and the fear of any possible conse- guishing criterion of murder is and nce having been heard and the points of it; he then declared that the defense rest- quences should not for a moment mis- ice aforethought. A particular iii will the counsel having been submitted to the ed upon an alibi set up by the Nicely lead you to rendering a verdict which a spite or a gradge is Court, counsel for the defendants moved the family, and a lot of unreliable witnesses your judgment does not approve. In like-dinarily understood as malice, but, mal-Court to order and direct that the closing and unknown men; demanded to know manner, if the law and the facts lead you lice as it appears in the definition of manner, argument to the jury on behalf of the Com- why none of the responsible citizens had in the exercise of a sound judgment to a der, is a legal term; it comprehends not monwealth be made by the District Attor-seen David or Joseph Nicely on the 27th verdict of not guilty, there it will be only ill will, but every case where there of February; why only such men as your duty to go, no matter what conse- is a wickedness of disposition, hardness Aaron Marks, David Geeting, Lewis quences follow. You should arrive at a of heart, cruelty, recklessness of consti-Paint and John Koontz, could undertake conclusion, as your oath implies, on all quences, and a mind regardless of social Grave and arduous as your duties. Under all the evidence and circum-

you, is not a difficult one, if you will murder? arrive at any conclusion you come to by a Umberger, Nannie liorner and Dr. Walk. due and careful consideration of the evi- er, if believed, shows that Umberger on dence in the case under such instructions | the night of the 27th of February has as; to the law as have been given you, free | was killed by two men, who entered his sympathy or feeling, and in total disre- committing a felony, and that he was gard of anything you have heard or read both robbed of a large sum of money and in or out of court before you were sworn | killed by means of a deadly weapon used other hand were motives that could be judicious men without fear, favor or affected body was identified and death expected to swear the lot of them. De- tion, looking nowhere but to the law and from the gain shot wound established

indeed, but your consciences would not berger was both robbed and killed by Nicely was incapable of the execution of be easy. Looked upon in a proper light, some persons. If the jury from all the such a trip; admitted that while the the task imposed upon jurors is not so evidence find the humicide was not com-

the inside of a man than himself or the jury, yet there were twelve pairs of eyes Court deemed competent. Endeaver to ture or upon heat and passion, upon a upon the jury as sompetent to see and remember what they said; observe the sudden quarrel, or by accident or mismeasure the outside of a man as Dr. Bruwitnesses on the stand-their demeanor take, as to which no evidence appears, baker or any other doctor, and submitand manner of testifying, and whether but find that life was cruelly, wilfully, ted to the jury if there was any such decandid or biased. Observe whether their wickedly and recklessly taken in total statements are consistent or contradic- disregard of social duty and when attory; whether contradicted in material fempting to commit robbery, after dethen argued that Kimmel, Serena and others had worked with Dave Nicely and have been assailed or their credibility im- will be warranted in finding that the knew that he was able to do a serious peached: and then, looking at the wit- homicide was murder, and competent day's work, showed how nesses, including the prisoners as wit- There is no evidence in the case to completely witness Kaylor was blasted nesses, their interest in the issue, their bring it within the definition of mantestimony and manner on the stand, and slaughter, as we view the evidence. If Gesting were of a similar buttern and the consistency of it, the jury determines you could on the exidence find it to be their testimony ought to weigh as the amount of credibility that should be an unlawful homicide without malice nothing before the jury. He then asked

> careful to observe the evidence and the murder, must find and ascertain whether ever conclusion reasonable, naturally, of 31st March 1830, reads:

> A human life has been taken in the perpetration or the attempted per-Herman Umberger, a former citizen of petration of a robbery or burglary that this county, is no more. He was sudden- constitutes the offense of murder in the ly taken off without warning by pesons, first degree. The killing while engaged whoever they were, that did not fear in perpetrating or attempting to perpe-

> pathy for the bereaved ones, pity for the aforthought. dead or indignation against the felons, If, from all the facts in proof attending

For taking this life the prisoners at the

At common law, murder is described to are the tribunal that must determine be where a person of sound memory and | whether the offense is murder of the first discretion unlawfully kills any reasona. or second degree or manslaughter, in the ble creature in being and under the light of the law, on the evidence heard. peace of the Commonwealth, with malice

nearing its close, and soon the whole re- It is alleged on part of the Commontime there was not a bit of ex- sponsibility of a true verdict will rest on wealth that, Herman Umberger, late of oners at the har? citement, giving Mrs. Umberger, you. You have patiently and with com-

The burden is upon the Common- Does the testimony point out the prisoners

I steeped right down from the pike; it was very steep; could not say how much will eleve the circumstance; between the point where I told me it was on Thursday and not on the pixe is steeped right down from the pixe; it was teef and participated as able, sober, intelligent and participated the point where I told me it was on Thursday and not on the pixe; it was the full length of the county and impaneled as able, sober, intelligent and judicious the further damaging fact that the hand-

trolished to estudy a jury of the office.

ed. There must be an unlawful ful homicide with melier of melbourid, ex-

seem, the task of finding a true verdiet stances surrounding the killing, your from the evidence under the law as given first inquiry should be, was the killing

The Commonwealth alleges the killing To find a verdict otherwise than on the as testified to by the witnesses name! mitted in self defense, as to which no The jury heard such witnesses as the evidence appears, or not by missivenmatters by others, and whether they manding, "your money or you life," they

aforethought, it would be manshughter, Then, giving due consideration to the If you find it to be murder, was it of the testimony of all credible witnesses for first, or the second degree?

and against the prisoners, and due regard | The laws of Pennsylvania distinguish to the discussion of the material evi- murder in two degrees; murder of the dence the jury find what are the facts first and murder of the account descent proven, and having found the facts, they | murder of the first degree is where a

fairly and truly follows from the law - Ail murder which shall be perpwere no nails in the center of the heel; there that the guilt of the defendants is established doubt and claimed that the force of the clock. Mr. Knowntz continued his arguidict, whether that he a verdict of guilty wait or by any other kind of willful, deexpression laid on the word remonable ment till a quarter past nine o'clock, at or not guilty. Peace of conscience liberate and premeditated killing, or 6. That if the jury believe the testimony of a doubt with a reason behind it. He which time he closed and court adjourns would only be disturbed by finding a which shall be committed in the perpendicular. law and the evidence. The verdict, any arson, rape, robbery or burglary whatever it may be, should be found shall be deemed murder of the first deupon due and careful consideration of gree, and all other kinds of murder shall all the evidence in the light of the law be deemed murder of the second degree. laid down, and should be entirely free and the jury before which any person from the emotions of fear, favor, affec- indicted for murder shall be tried, shall, tion, sympathy, bias, prejudice, hatred, if they find such person guilty thereof.

ill-feeling or revenge, and should be in ascertain in their veriliet whether it be It is not the mere killing of a person Sad as is everything connected with would have been murder; that is, it

> act. He who uses a deadly weapon must be presumed to do it wickedly and

the 27th of February inst, killed by the pris-

mitted the offense. Kills Steam, Mrs. Um-