

The Ebensburg Alleghanlian.

L. BARKER, Editor and Proprietor.
TODD HUTCHINSON, Publisher.

I WOULD RATHER BE RIGHT THAN PRESIDENT.—HENRY CLAY.

TERMS: \$3.00 PER ANNUM.
\$2.00 IN ADVANCE.

VOLUME 7.

EBENSBURG, PA., THURSDAY, FEBRUARY 15, 1866.

NUMBER 18.

THE PAUL-MUNDAY MURDER.

The Commonwealth vs. John B. Houser and Daniel Buser.
No. 1 Dec. Term, 1865—
Murder.

The Court of Oyer and Terminer of Cambria County—Hon. Geo. Taylor, P. J.
CHARGE OF THE COURT.

Members of the Jury:—The prisoners have been arraigned, and are upon trial, on an indictment which charges them with the murder of Polly Paul, on the 7th day of June, in this county; and you have been empaneled and sworn to try the same.

The body of the deceased, a maiden of about seventy years of age, who had a long time resided upon and used and controlled as her own, and had generally lived alone, a farm in Croyle township, found in the stable on the premises on the 7th day of June, by neighbors whose attention had been directed to the place in the manner disclosed in the evidence; and, in the orchard, a short distance from the house and stable, the body of Catharine Mundy, a girl of about sixteen, the daughter of a neighbor, and who was for the time staying with Miss Paul learning to spin. They were both dead. The skull of the one was broken and in a fragmentary state, evidently caused by blows with a club, or some blunt instrument, as Buser testifies, which must, in his opinion, have caused death instantly; or, at least, as soon as it fell upon her head, as he says, as if it had been severed from their bodies by blows. Two clubs were found, just as carefully fashioned, of the same wood, and the same kind of wood, one near the body of Miss Mundy, in the orchard, and the other in the house, where the bodies were found in disorder; and the bodies were found upon the floor. Miss Mundy, during the long period she had occupied the property alone, had been selling and other "marketing," raising and occasionally selling stock, and doing for the neighbors; and is shown to have sold timber from the land, and to have received money in different sums, on different occasions. The reasonable supposition is, that she must have accumulated a considerable amount of money, and that she must have loaned any, and there was none in the house except \$30 or \$40 in a pocket of a dress hanging up against the wall, and a few small pieces of gold scattered where the bed was torn up, on the floor.

In the light of these facts, it is clear and a doubt that Miss Paul and Miss Mundy, were both murdered by some persons; and that, whoever did it, was a murderer of the highest grade, of the first degree. The unlawful killing of any man being with malice aforethought, or of implied, is murder; and malice implied in every act of unlawful killing. Murder in Pennsylvania, is either of the first or second degree. All murder perpetrated by means of poison, or by lying in wait, or by any other kind of willful, premeditated killing, or which is committed in the perpetration of any crime, is murder of the first degree. In all the cases specified, and in every other case in which the taking of human life was plainly contemplated and intended, which constitutes a willful, deliberate, and premeditated killing, the murder is of the first degree. And it is the duty of the jury, when they find a prisoner guilty of murder, to ascertain and find the degree, the degree of it.

It is clear beyond any doubt, we repeat, that Miss Paul and Miss Mundy, were murdered; and equally clear that they were both murdered from the same motive, in the execution of one criminal purpose, and by the same agency; and, it is equally clear, that it was a murder, not a robbery, and, therefore, a murder of the first degree. The two clubs, and the evidence of Mary Stibilske, who, when hunting her cows, was disturbed by a noise at the house, and saw men in dark clothing running towards the house, and whose report led to the discovery of the murder, would seem to be, in plain, also, that two persons, at least, were concerned in the commission of the crime.

This indictment charges the prisoners with the murder of POLLY PAUL, and, while the jury are to pass upon the evidence, and determine all questions of fact, in the case, the only question about which there is any controversy, or ground of controversy, is, did the prisoners commit the crime?—are they guilty?

It is for the Commonwealth to prove the guilt agency, and by evidence. It is for the prisoners to show that there is no reasonable doubt upon the controlling question of fact: no reasonable doubt of their guilt. There are kinds of evidence, by which any proposition, in any case, civil or criminal, may be established in a Court of Justice, and, as where a witness testifies directly and positively to the facts, and presumptive or circumstantial, as where the witness proves

other facts which fact prove, or tend to prove, the fact in controversy. The evidence here adduced and relied upon by the Commonwealth is of the latter kind; or, entirely circumstantial. No one has been brought here to testify who witnessed the deed. No eye, but the all-seeing eye of God, and of the devoted victims, beheld the horrid tragedy; at least, no witness beheld it, who can recognize and point out the guilty actors. The little girl, Mary Stibilske, there can be no doubt, was there about the time; and, when she heard the scream, or strange noise that alarmed her, and saw, in the evening twilight, two men in dark clothing running towards the barn, she, no doubt, saw the perpetrators, in the very act of committing the crime; but she cannot identify them, or tell who they were. There is no direct and positive evidence of identity. The evidence adduced by the Commonwealth for this purpose, is, we repeat, entirely circumstantial; in other words, the Commonwealth has undertaken to prove certain independent facts, which facts, it is alleged, cannot be reasonably accounted for in any other way than upon the supposition, that the prisoners are the two men seen by Mary Stibilske, the men who provided and used the two clubs, and committed the crime charged in the indictment. The evidence is not any the less worthy of your serious and careful consideration. Secrecy is almost universally sought as a shelter from the penalty due to atrocious crime. Almost every deliberate murder, particularly of the character here charged, is perpetrated, it may be affirmed, in the belief, entertained at the time, that it will never be detected. It was in that view, there can be no doubt, or to hide and cover up the guilt of a robbery, by sealing in death the lips of those who might have exposed it, that this unmanly and revolting double murder was committed. It often happens, therefore, that guilt and the guilty can only be brought to light and to punishment, by the evidence of circumstances. That, indeed, alone, would not be a sufficient reason for resorting to it, and resting important conclusions upon it; for no one should be convicted of any crime, not to say one of the darkest in its guilt, and the most dreadful in its consequences, except upon sufficient and legal evidence. But the law regards circumstantial evidence, when the facts from which inferences are drawn, are plainly established, and are irreconcilable with any other rational view of the case than that which they are adduced to prove, as sufficient evidence. It is said by Mr. Starkie, a text-writer of high authority, that "circumstantial evidence is allowed to prevail to the conviction of an offender, not because it is necessary and politic that it should be resorted to; but because it is, in its own nature, capable of producing the highest degree of moral certainty in its application." And so, the judges of our Supreme Court have declared, not only that it is legal evidence, but that it may exist in such amount, and be of such a character, as to be stronger than a given amount of direct testimony. And this accords with the consciousness and experience of every reflecting man. As if to provide for a case where circumstantial is the only available evidence, God hath so ordained, and so constituted the human mind, that we thus reason to conclusions upon which the judgment rests, in matters of the highest personal concernment to ourselves.

The convincing force and persuasive power of circumstances, consist in the known and experienced connexion between cause and effect, motive and conduct, and the known, natural, felt, and understood relation of things. Every thing necessarily leading to and connected with a criminal act,—all the circumstances of time, place, motive, means, opportunity, and conduct,—all join and harmonize together, as part and parcel of one transaction. When brought together, they join and fit, like parts of a complicated machine, or fragments of some broken thing. No part will fit elsewhere than in its own place; and, at the attempt to account for it otherwise, or falsely, truth usually asserts her prerogative, and exposes the attempted deception. Such is the force and power, the beauty and harmony, of truth. And so, gentlemen, when all the circumstances of time, place, motive, means, opportunity, and conduct coincide with the supposition that a party is guilty, and cannot be accounted for on any other reasonable supposition, their irresistible tendency is, to convince the mind, satisfy the judgment, and fix belief.

"When the known and ascertained facts," says Mr. Starkie, "so coincide and agree with the hypothesis that the disputed fact is true, as to render the truth of any other hypothesis, on the principles of reason and experience, extremely remote and improbable, and morally, though not absolutely impossible, the hypothesis is established as morally true." It is also said by the same authority, that "the nature and degree of coincidence between the circumstances and the hypothesis may be sufficient to exclude all reasonable doubt, and thus generate full conviction and belief, although it be not, as in the former case, of an absolute and demonstrative nature." It was said, also, by the late distinguished Chief Justice Gibson, that "the law enacts a conviction where there is legal evidence to show the

prisoner's guilt beyond a reasonable doubt; and that "circumstantial evidence is legal evidence," and "is sufficient for the purpose when it excludes disbelief; that is, actual, and not technical disbelief; for he who is to pass upon the question is not at liberty to disbelieve as a juror, what he believes as a man. It is enough that his conscience is clear." And hence, gentlemen, the legal test is, "the sufficiency of the evidence to satisfy the judgment and conscience of the jury."

It is to be observed and borne in mind, on the other hand, that the facts from which conclusions of guilt are sought to be drawn, should be satisfactorily proven, and, in a criminal case, to warrant a conviction, should be sufficient to exclude every other rational supposition, suggested or supported by any evidence, but the supposition that the accused is guilty. Such is the view which the law takes of circumstantial evidence; such the rules and caution which it suggests to guide a jury in passing upon it, and deducing important conclusions from it. And, accordingly, you, gentlemen, regarding this rule and caution, must judge of the truth of the facts and circumstances from which conclusions are sought to be drawn; determine, if you find them to be true, whether there is any reasonable explanation; and what conclusions, if true, and unexplained and unaccounted for, they reasonably support. You must thus think, scrutinize, and reason, at every step in the investigation; for your verdict, at last, must be your judgment formed upon the law and the evidence; and the test established by the law, as we have seen, is, the sufficiency of the evidence to satisfy your judgment and conscience.

We recur now to the inquiry, are these prisoners the guilty men?—and does the evidence prove it beyond a reasonable doubt? The allegation, or theory, of the Commonwealth is, that these prisoners, who it appears had been in the Western Penitentiary for some time prior to the 17th of May, when their term of imprisonment expired, and who had been companions before and have been since, while in the Penitentiary, obtained information from a certain Philip Fulger, also a convict taken from Cambria county in 1861, and whose wife before his marriage had lived with Polly Paul, of the lonely and secluded residence and of the circumstances of Polly Paul; and that it was there, in the Penitentiary, plotted and agreed that when the prisoners should be released, they would rob her though they should have to commit murder in doing it, and appropriate a portion of the money they might obtain for the purpose of procuring a pardon for Fulger, and releasing him from prison. That they were released on the 17th of May; and that on the 25th of May, John B. Houser, one of the prisoners, was in the neighborhood of Summerhill, Cambria county, a few miles from the residence of the deceased, moving from one place to another, inquiring for some widow, and acting in a noticeably singular manner,—endeavoring, as the counsel of the Commonwealth surmise and allege, preparatory to the execution of the alleged criminal purpose, to explore the neighborhood, and find the residence of the deceased. That a few days afterwards, or about the 28th or 29th of May, the prisoners went together to the house of a Mrs. Miller in Allegheny city, where they remained, as boarders, until Monday the 5th of June, when they both left together, carrying with them a tin box containing their instruments as coppers and leechers, which they professed to be, and a large black oil cloth sack. That, on Tuesday, the 6th of June, the day before the murder, Houser again made his appearance in Cambria county, at the house occupied by Susan Preall, on the road from Summerhill to or past Isaac Paul's, carrying a tin box similar to that produced here belonging to the prisoners, and inquired if they wanted any cupping or leeching done, and afterwards went on towards Isaac Paul's, about three-fourths of a mile from Polly Paul's, where he made particular inquiries about Polly Paul, whether she was alone, and whether she was alone at that time, and whether there was any man about her house, and whether he would have to pass the saw-mill to go there; and, after inquiring whether they had any cupping, leeching, or tooth-drawing to do, went back the road he came, towards Summerhill. That on Friday or Saturday after the murder, or on the 9th or 10th of June, the prisoners returned together, as they had left, to Mrs. Miller's in Allegheny city; when Houser's feet were sore and swollen, and his appearance and conduct that of a dejected and distressed man; that in a conversation heard between them afterwards in Mrs. Miller's house, in which they disputed, Houser asked Buser to get the money they had and give him his share, stating that he wanted to leave him and go to his father; to which Buser replied that if he would get the money then, it might get them both into trouble. That they had but little money when they left Allegheny city, and claimed to have money, although they did not exhibit any, after their return. That they left Allegheny city to go "up the Railroad," towards the mountain; and that while they were away the specific crime planned and purposed in the prison, was committed by

some agency, and in the manner purposed,—the purpose being to rob Polly Paul if it should be necessary to murder her to do it, and "her bed" even, in which Fulger said "she kept her money," being found torn up. And that they have utterly failed to show where they were, or what they were doing, or to give any account of themselves, between Monday and Friday of the week of the murder. These are the circumstances, alleged, and claimed to be proven, on the part of the Commonwealth. It is for you, gentlemen, to determine whether the testimony of the witnesses establishes the facts alleged; and what conclusions, if found to be true, they fairly support. It is denied, on behalf of the prisoners, that these allegations, or the most prominent and important of them, are true, or established by the testimony in the case; and denied, also, that if proved, or assumed to be true, they warrant the conclusion claimed to result from them; or are sufficient to exclude every other reasonable hypothesis, and prove the guilty agency of the prisoners, or of either of them, in the murder.

To prove the alleged conspiracy and plot in the prison, the Commonwealth produced and examined William McCreary, a convict at the same time, in the Western Penitentiary. Philip Fulger, the two prisoners, and this witness, were all at the same time in that prison; and the testimony of the witness purports to be a disclosure of what was communicated to him, or heard by him, within its walls. It is, indeed, if true, a startling thought, and one which should excite public attention, that the place provided and maintained by the State for the punishment and reformation of felons, may, from defective construction, or any other cause, become a place where crime is concocted! But we have only to do with the question of fact as it bears upon this issue.

William McCreary testifies: "I was an inmate of the Western Penitentiary for some time prior to the 17th of last May. I have seen John B. Houser there, and never saw him anywhere else. I had been acquainted with Buser. After he was committed, he told me there he came from Allegheny county. Buser was confined or put in the second cell from me, and after he had been there some time—it is customary when one comes to put him in with an old one who has been there some time to instruct him in shoemaking. Buser was put in the adjoining cell, with a man adjoining me. After he had been there some time, probably a week, he recognized me as a person that had stopped on his trading boat in 1855. I had not seen him or heard of him afterwards. We talked about different things. In the meantime Philip Fulger was further up the range or tier. He came down and was put in a cell adjoining the one Buser occupied. After Buser became acquainted with Philip Fulger—he was a German from Cambria county; at least he told me so—Buser stated that he had got some 'points,' [which the witness here explained to be places where there was money,] and that they—he and his partner—were going to make some of those 'points,' and if they succeeded in making any of those 'points,' they intended to put up some of the money for Fulger to get out of prison. We had different conversations in regard to this; I don't know how many. He told me there were several places: one was an aunt of Fulger's wife, [Buser told me:] there was another old lady that lived by herself, a weaver, of the name of Paul; I think he called her 'Mary Paul.'"

"I remained in that cell fifteen months, and part of the time Buser was in an adjoining cell. At the end of that fifteen months, I moved up that tier to the adjoining cell to Philip Fulger. Fulger and Buser worked by spells in the same cell, hob-nailing shoes, till Buser went out. Fulger remained in the cell. About four, probably six weeks in the spring,—after winter had gone by,—before Buser went out,—[the witness here referred to the difficulty of noting there the lapse of time; and, after stating that "prisoners frequently got together, to get their hair cut, or some thing of that kind, and explaining how communication was kept up by means of the steam pipes, he went on to relate a conversation heard by him between Buser and Fulger in a cell at the time referred to.]

"I did not," he says, "hear the first of the conversation. They were talking when I came down. Buser was sitting in the middle of the cell; the one about nine, the other about five feet from me, including the thickness of the wall. The first I heard, Buser said, 'Philip, if I make any of those points, you can depend on us doing what I promised.' He said 'you can be got out, and you will not have longer to stay than August; you will be got out by August.' Fulger says, 'the old woman's, the weaver's, you can get that: there will be no one there to stop you.' He remarked that he thought she kept her money in her bed. He said 'I think you will find her money in her bed.' He called her 'the old weaver.' I think he did not name her then. Buser said, 'Johnny and I will make sure of that, if we have to murder her to get it.' That was the principal part of the conversation with Buser. I had frequent conversations

with Fulger—[informed by the Court that they would not be evidence.] The intention was to go as soon as they got out; as soon as they could make arrangements. "There was a man, a cooper by trade, not by name, in the neighborhood, spoken of. This was in the first conversation Buser talked about those points that might be made."

He then states a conversation with Houser on one Sunday in March: "I asked Houser if he was going to send some 'weed' [tobacco] in after he went out. He said he could not then; he was hard up. He would have to make a raise first. I remarked 'do you think you can do that?' He said 'oh, yes, there is a pile waiting on me.' Said I, 'in Cambria?' He did not speak; nodded. I think I made some remark that let him know that I understood. "I never heard any conversation between Houser and Buser about Cambria county, that I could understand. Sometimes they talked in German. Twice I can remember of them using the word 'Cambria.' It was on Sunday each time."

When re-called, he stated that he had never resided in Cambria county; how he heard of the murder, "in the latter part of June, probably between the 15th and 25th," and that he communicated the facts testified to here, the same day to the Warden; and that "there was no promise of a pardon or any other inducement held out to him to testify in this case." To a question put by the Court, he said the first he knew of being pardoned, "Detective Hague told me on the way my pardon was here."

We have thus, because of its importance, brought to your recollection the entire testimony of this witness, as we noted it down, except only some explanatory and unimportant statements, which we were not careful to preserve. It is a most important and material part of the evidence of the Commonwealth; since, if true, and believed, it reveals a motive and a purpose, on the part of the prisoners, to commit the crime charged in the indictment. It should receive, therefore, the most careful scrutiny and examination.

After this witness had been called to the stand, and sworn to testify in the case, it was elicited from him, in answer to a question, asked without objection by the prisoners' counsel, that he had "recently got out of the penitentiary," that he had been tried in Washington county, and had been "convicted on a charge of burglary," and that he had been in before on the same charge, and that he "was convicted and pardoned on the first charge on the ground that he was not guilty of the offence." It was here objected by the prisoners' counsel that he was not a competent witness. A pardon by the Governor was then produced and read. It was still objected "that the pardon produced for the last conviction did not remove the disability occasioned by the first." It was apparent, however, that the first term of imprisonment must have been, in some way, terminated; and it was our impression, moreover, that the pardon was as well proved as the conviction, if it would be correct to say that either was properly sufficiently proven; and that, shown as it was, that conviction could only affect his credibility, and could not be allowed entirely to exclude his testimony as incompetent. He was allowed, therefore, to testify; and, upon the prayer of the counsel of the prisoners, a bill of exceptions was sealed. The examination which we have since given the question, has satisfied us that we were right. If, however, we erred in this ruling, we rejoice to know that the prisoners are not without a remedy. We now instruct you that he is a competent witness, and his testimony to be regarded by you as legal and proper evidence, if, in view of the attitude he occupies, and of everything urged against him calculated to affect his credit, you believe it. He stands before you, upon his own admission, twice convicted of a felony; though the admission, with respect to one of the convictions, is qualified by a denial of his guilt. His character for truth and veracity, on the other hand, has not been directly assailed; and the counsel of the prisoners declined to subject his statements to the test of a cross-examination. You witnessed his manner of testifying, and will scrutinize carefully the subject matter of his testimony. It is argued against it that the confinement in the penitentiary is "separate and solitary;" and that he could not, consequently, have heard what he has undertaken to detail; and that neither the Warden, nor any other witness, has been called to corroborate him, by showing that he could. On the other hand, you have been reminded that while the Warden joined in asking his pardon, no witness has been called to contradict him, by showing that he could not; and you have been asked to inquire how he could have invented the story. All we have to say to you, is, he is a competent witness: do you believe his testimony?

To show the alleged conduct of the prisoners in Allegheny city, shortly before and after the murder, and the time and manner of their leaving and return, the Commonwealth has called and examined as witnesses Elizabeth Graham, Martha Barnes, and John S. Johnston.

Elizabeth Graham testifies: "I reside in Allegheny city. Third

Ward. I am acquainted with these two prisoners. I was boarding at Mrs. Miller's, and they came there about the 28th or 29th of last May. They stayed till the 3rd day of June. The 3rd of June they cupped me. They were together at that time. On the next day, on Sunday, Mr. Barnes, the next door neighbor, got his hand cut. They dressed his hand. Buser said if they didn't go away on Monday they would dress it again. He went early on Monday morning and dressed his hand. He borrowed one dollar of me; said he wanted to go to the drug store, and get some medicine. He told me he had some money, but he wanted that to pay for a ticket to ride a piece on the cars. They wanted to go to the country. Houser was present at that time. That afternoon they both left; about 2 or 3 o'clock in the afternoon. They took a carpet sack and a tin box. It was a brown tin box. It was such a looking one as that. [One produced in court.] Never had the box in my hands. It was a black oil cloth carpet sack.

"They came back on the next Saturday in the afternoon; Houser's feet were very sore. They were both blistered and swelled. He stayed in the house for over a week after that. He said his feet were too sore; he couldn't get out. Buser was out; he brought sour-kraut several times. He cupped his feet with one hand.

"They followed cupping, and bleeding, and leeching, while they were there. They had no money before they left. Dan said they had money now, but it wouldn't do for them to get that. I was laying in the room on a lounge; I was sick; and the two were in the room. They had a few dollars; got to quarrelling in the room. Houser told Buser he wanted him to go and get that money they had, and give him his share. Houser said he wanted to go to his father; he would leave Buser. Buser said, [putting his finger to his eye,] 'do you see anything green?' Buser said it wouldn't do for him to go and get that money; it might get them both into trouble. I didn't hear any more.

"Houser appeared to me after he came back like a man that was distressed in mind. He would get up from the kitchen and go into the room, and lay down. He was not jolly and jokey, like he had been before."

This is her testimony in chief. In what she said in her cross-examination, which, as you will recollect, was mainly directed to other things, urged here against her credibility, there is nothing which varies her statements respecting the prisoners. You heard her cross-examination, and have heard the comments of the prisoners' counsel upon that part of her testimony.

Martha Barnes testifies that she "saw these two men when they first came to Mrs. Miller's, and thinks it was in May or June."

"I think," she says, "it was on the 3rd of June they cupped Mrs. Graham; it was on Saturday. I seen them on Sunday. On Sunday my husband got his hand cut. On Sunday Buser came and dressed it by candle light. Then came the next morning and took a plaster off, and dressed it. He dressed it on Monday; then they were round there. He dressed it twice. He said they had to go away or they would attend to it more. I can't tell how long it was till they came back again. Mrs. Miller moved away, and Buser bought furniture to go to house keeping. His wife gave him the money; so she said. She cried about it afterwards. Mrs. Graham was cupped on Saturday; Mrs. Miller moved the next Saturday. Mr. Graham came home from the army, and they got married. I believe that to be the very same box."

On cross-examination, she stated that "Buser moved into the house on Saturday, and the furniture was bought a day or two before. It was on Monday he was there and dressed my husband's hand. He seen and dressed it twice; on Monday and Sunday evening. I think he was round there afterwards; didn't pay much attention." She stated further, that "they were both there, and said they had to go away."

John S. Johnston testifies: "I am not much acquainted with the prisoners; I have saw them. I saw Houser first in 1862 in the Western Penitentiary. [Explains how.] I have saw them both. I have seen them since the 17th of May. I saw these men at Mrs. Miller's house. I didn't know Buser; he had a large mustache. I did know them when they were living at the house of Mrs. Miller. They went under the occupation of what they called coppers and leechers. I recollect the time they cupped Mrs. Graham. It was on the 3rd of June, 1865. They left Mrs. Miller's house Monday about dinner time; I saw them about 11 o'clock, not afterwards, that day. They returned Friday following; Friday they returned, no matter what day of the month it was.

"They had no money when they left, or but very little; all that I seen them have didn't amount to a dollar. They may have had more. I didn't know directly what their circumstances were after they returned. Daniel Buser asked me what I would take for the house. I told him \$1,600 in greenbacks. He said that was more than his pile would reach. He said he would give me \$500 in hand, the