1709

THE

TRIAL

OF

JOHN WILLIAMS, FRANCIS FREDERICK, JOHN P. ROG, NILS PETERSON, AND NATHANIEL WHITE,

ON

AN INDICTMENT

FOR

MURDER ON THE HIGH SEAS;

BEFORE THE

CIRCUIT COURT OF THE UNITED STATES,

HOLDEN FOR THE DISTRICT OF MASSACHUSETTS,

AT BOSTON, ON THE 28th OF DECEMBER, 1818.

BOSTON:

PRINTED BY RUSSELL AND GARDNER,

PROPRIETORS OF THE WORK.

1819.

DISTRICT OF MASSACHUSETTS, TO WIT:

District Clerk's Office.

BE IT REMEMBERED, That on the thirty-first day of December, A. D. 1818, and of the Forty-third Year of the Independence of the United States of America, RUSSELL and GARDNER, of the said District, have deposited in this Office, the title of a Book, the Right whereof they claim as Proprietors, in the words following, to wit:—"The Trial of John Williams, Francis Frederick, John P. Rog, Nils Peterson, and Nathaniel White, on an Indictment for Murder on the High Seas; before the Circuit Court of the United States, holden for the District of Massachusetts, at Boston, on the 28th of December, 1818."

In conformity to the Act of the Congress of the United States, entitled "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned;" and also to an Act, entitled "An Act, supplementary to an Act, entitled An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned; and extending the benefits thereof to the Arts of Designing, Engraving and Etching Historical, and other Prints."

JOHN W. DAVIS, Clerk of the District of Massachusetts.

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CIRCUIT COURT OF THE UNITED STATES,

MASSACHUSETTS, OCTOBER TERM, 1818, AT BOSTON.

PRESENT,

Hon. JOSEPH STORY, *Associate Justice of the Supreme Court.*
" JOHN DAVIS, *District Judge.*

THE UNITED STATES
vs.
JOHN WILLIAMS, JOHN P. ROG, FRANCIS FREDERICK, NILS PETERSON, alias NILS PETERSON FOGELGREN, and NATHANIEL WHITE, alias NATHANIEL WHITE GLASS.

On the 14th day of December, 1818, the prisoners were arraigned upon an Indictment for the murder of Thomas Baynard, supercargo of the schooner Plattsburgh, whilst on a voyage from Baltimore to Smyrna; to which Indictment they severally pleaded not guilty.

Samuel L. Knapp and Stephen Hooper, Esquires, were assigned by the Court as Counsel for the prisoners; and this 28th day of December appointed for their trial.

The Court was opened at 11 o'clock A. M. and the prisoners brought in. The Clerk then asked them if they had been furnished with a copy of the Indictment and a list of the Jurors two days previous to this; and whether they would challenge the Jurors by themselves or their Counsel. To this they replied, that they had been furnished with the Indictment and list of Jurors, and that they would challenge by their Counsel. The Clerk then proceeded to empannel the Jury. As they were called, the Counsel for the prisoners inquired of them severally, whether they had been masters of vessels, and being answered in the negative, no challenge was made, and the following gentlemen were sworn:—

WILLIAM FARNHAM, Foreman,	ISAAC VINTON,
NATHANIEL BRADLEE,	CORNELIUS STONE,
JOSEPH CURTIS,	ELISHA BARTLETT,
EBENEZER GOODRICH,	AARON BARKER,
LUTHER EATON,	ROBERT HARRIS,
ISAAC APPLETON,	AMOS ARCHER.

The Clerk then read the Indictment to them as follows:—

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, SS.

At a Circuit Court of the United States for the first Circuit, begun and holden at Boston, within and for the aforesaid District of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and eighteen.

The Jurors for the United States of America, within the District and Circuit aforesaid, upon their oath present, that John Williams, late of Boston aforesaid, Mariner; John P. Rog, late of Boston aforesaid, Mariner; Francis Frederick, late of said Boston, Mariner; Nils Peterson, otherwise called Nils Peterson Fogelgren, late of said Boston, Mariner; and Nathaniel White, otherwise called Nathaniel White Glass, late also of Boston aforesaid, Mariner; not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the twenty-second day of July, in the year of our Lord one thousand eight hundred and sixteen, with force and arms, upon the high seas, out of the jurisdiction of any particular state, in and on board of a certain vessel called the Plattsburgh, which said vessel then and there belonged and appertained exclusively to a citizen or citizens of the United States, in and upon one Thomas Baynard, in the peace of God, and of the said United States then and there being, on board of the vessel aforesaid, piratically and feloniously, wilfully and of their malice aforethought, did make an assault: And that the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, then and there upon the high seas aforesaid, out of the jurisdiction of any particular state, in and on board the vessel aforesaid, then and there belonging and appertaining exclusively to a citizen or citizens of the said United States, as aforesaid, piratically and feloniously, wilfully and of their malice aforethought, did take the said Thomas Baynard into both hands of them, the said John Williams, John P. Rog, Francis Frede..ck, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, and did then and there piratically and feloniously, wilfully and of their malice aforethought, cast, throw and push the said Thomas Baynard from on board of said vessel into the sea, by means of which said casting and throwing and pushing of the said Thomas Baynard from on board of the said vessel into the sea aforesaid, by the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, in manner and form aforesaid, he the said Thomas Baynard, in the sea aforesaid and with the waters thereof, was then and there choaked, suffocated and drowned, of which said choaking, suffocating and drowning, he the said Thomas Baynard, then and there upon the high seas aforesaid, and out of the jurisdiction of any particular state, instantly died.

And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, him the said Thomas Baynard, then and there upon the high seas aforesaid, out of the jurisdiction of any particular state as aforesaid, in manner and form aforesaid, piratically and feloniously, wilfully and of their malice aforethought, did kill and murder, against the peace and dignity of the said United States of America, and the form of the Act of the Congress of said United States, in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the beforementioned offenders, after the commission of the aforesaid offence, were first brought into Boston aforesaid, in the said District of Massachusetts.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John Williams, Mariner, John P. Rog, Mariner, Francis Frederick, Mariner, Nils Peterson, otherwise called Nils Peterson Fogelgren, Mariner, and Nathaniel White, otherwise called Nathaniel White Glass, Mariner, all late of Boston, in the said District of Massachusetts, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the twenty-second day of July, in the year of our Lord one thousand eight hundred and sixteen, with force and arms, upon the high seas, out of the jurisdiction of any

particular state, in and on board of a certain vessel, then and there belonging and appertaining exclusively to a certain citizen or citizens of the United States of America, called the Plattsburgh, in and upon one Thomas Baynard, in the peace of God, and of the said United States then and there being, piratically and feloniously, wilfully and of their malice aforethought, did make an assault; and that the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, with a certain wooden staff of no value, which each of them, the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, then and there, in their hands respectively had and held, him the said Thomas Baynard, in and upon the head, neck and sides of the said Thomas Baynard, then and there, piratically and feloniously, wilfully and of their malice aforethought, did strike and knock, giving unto the said Thomas Baynard, then and there, with the wooden staves aforesaid, in and upon the head, neck and sides of him the said Thomas Baynard, divers grievous wounds and bruises; and that the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, then and there, piratically and feloniously, wilfully and of their malice aforethought, upon the high seas aforesaid, out of the jurisdiction of any particular State, in and on board the vessel aforesaid, then and there belonging and appertaining to a certain citizen or citizens of the United States aforesaid, did take the said Thomas Baynard into both hands respectively of them the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, and did then and there piratically and feloniously, wilfully and of their malice aforethought, cast, throw, and push the said Thomas Baynard from on board of said vessel into the sea, by means of which said casting and throwing and pushing of the said Thomas Baynard from on board of the said vessel into the sea aforesaid, by them the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, in manner and form aforesaid, he the said Thomas Baynard, in the sea aforesaid and with the waters thereof, was then and there choaked, suffocated, and drowned; of which said striking and knocking of him the said Thomas Baynard, by the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, with the wooden staves aforesaid, in and upon the head and neck and sides of him the said Thomas Baynard, and of the aforesaid casting, throwing and pushing of the said Thomas Baynard from on board of the said vessel into the sea aforesaid, by them the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, and of the choaking, suffocating and drowning with the waters of the sea aforesaid, he the said Thomas Baynard, then and there, upon the high seas aforesaid, out of the jurisdiction of any particular state, instantly died.

And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, him the said Thomas Baynard, then and there upon the high seas aforesaid, out of the jurisdiction of any particular state, in manner and form aforesaid, piratically and feloniously, wilfully and of their malice aforethought, did kill and murder, against the peace and dignity of the said United States, and against the form of the Act of the Congress of said United States, in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that after the commission of the said offence, as aforesaid, the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, otherwise called Nils Peterson Fogelgren, and Nathaniel White, otherwise called Nathaniel White Glass, the before

mentioned offenders, were first brought into the District of Massachusetts aforesaid, and into the said town of Boston, in said District.

A TRUE BILL,

H. DEARBORN, *Foreman.*

GEO. BLAKE, *U. S. Attorney for Mass. District.*

The prosecution was then opened, on behalf of the United States, by George Blake, Esquire, the District Attorney.

May it please your Honors,
Gentlemen of the Jury,

It has now become my duty to lay before you the evidence, and to explain to you, under the direction of this honorable court, the rules of law which are applicable to the horrible transaction described in the present indictment. In the performance of this duty, it will be my endeavor, as well now, as in every subsequent stage of this interesting prosecution, to make my communications to you with all possible plainness, simplicity and truth, being inclined, most certainly, on the one hand, to relax in nothing, which properly belongs to the faithful discharge of my official functions, and on the other hand, to set down nought against these defendants, but what is justly due to their character and crimes. In a word, it will be my desire to represent the case to you fully and fairly, and to do nothing more than assist you in forming just conceptions of its character, according to the law and the evidence.

I am the more particular in thus declaring to you the dispositions and feelings with which I enter upon the performance of my public duties, on the present occasion, from the consideration, that the case is one of most unusual, of almost unparalleled enormity; and hence it might very naturally be supposed, that I should even go beyond the proper sphere of those duties, in my zeal to bring down the vengeance of the law upon the heads of the offenders. I beg leave, gentlemen, again and again to assure you, not that my mind has been unmoved by that just indignation which every man must feel, and ought to feel, in regard to the perpetrators of crimes of such atrocity, but, that I shall abstain, as far as possible, as I sincerely hope you will, also, from the indulgence of such feelings, in the course of the present trial.

There are moreover, gentlemen, several circumstances of a peculiar nature, connected with the subject of the present prosecution, which have tended, no doubt, to produce a strong impression on the public mind unfavorable to the prisoners, and which therefore, as an act of justice to their cause, I deem it my duty to notice in the present early stage of this inquiry. The history of the schooner Plattsburgh, which is spoken of in the indictment, and of the tragical scenes performed upon the decks of that *ill fated vessel*, in the course of her voyage from Baltimore, in the summer of 1816, has long since been a matter of public notoriety in our country. If you are in the habit, as most, if not all of you, undoubtedly are, of looking over our public Gazettes, it is altogether improbable that the repeated statements which have ap-

peared therein relative to the bloody transactions here alluded to, can have escaped your observation. More than two years have since elapsed, and no circumstance has intervened, tending to mitigate the sensations of horror and indignation which the bare rumor of these scenes was calculated to awaken in your minds. It has of late also been a matter of publicity, that the case of the schooner Plattsburgh had been the subject of a particular memorial on the part of her owner, (a citizen of Baltimore,) to the government of the United States, and that the subject having been considered by the President, as of sufficient importance, in a public point of view, to justify such a course of procedure, arrangements were promptly made at the public expense, for bringing home the supposed offenders from various places in Europe where they had been apprehended, in order to take their trial before the proper tribunals of our country. For this purpose, it has generally been understood, I know not precisely on what authority it has been so understood, that the public ship of war, the Hornet, was expressly dispatched on her late expedition, to a port in Denmark. Suffice it to say, that the arrival of this ship several weeks since at the port of Boston, having on board, and in irons, four of the prisoners whom you now see at the bar, is a circumstance, of which, without doubt, you must heretofore have been apprized; and this serves to shew that one object at least, of the expedition, must have been to bring to punishment, men presumed to have been guilty of great and aggravated offences.—All these circumstances, I cannot doubt, must have been well known to you at the time of your being summoned to the trial of the present cause, and that their tendency must obviously have been, to produce upon your minds, as well as upon the community in general, pretty strong prepossessions against the innocency of these defendants. I conjure you, however, to believe me, when I say to you, that if it were possible for me to derive any support to the present prosecution from an attempt to foster and cherish these prepossessions, I should disdain such an attempt from the very bottom of my heart. Besides, gentlemen of the jury, I well know, as does every man, in any degree conversant with the course of our Judicial proceedings, that an attempt to gain an ascendancy, in a capital trial, by means like these, would not only be useless, but worse than useless; that it would most inevitably, redound to the utter shame and confusion of the prosecutor. In other times, and in other countries, whatever may have been the instances of a fellow being, on a trial for life, having suffered in his case, from the influence of popular *feeling* or *prejudice*, I trust in God, that an example of that kind will never be found in the annals of an American court of judicature.

Considering, indeed, the admirable manner in which the judiciary tribunals of our nation are constituted, the elevated and independent character of our judges, the intelligence, rectitude, and

purity of our juries, the justice and the mildness of our laws, it would be vain to expect that any artifice of counsel, or any clamour of the multitude could, in this country, and in this court, be successfully employed, to bring any man, however obscure his condition, however notorious or aggravated his offence, to a trial, under the weight of "*anticipated conviction.*" So far at least, then, as may depend on my own very limited influence in this cause, the learned Counsel for the Prisoners may be assured that they have nothing to apprehend, for the safety of their clients, from any of the circumstances to which I have adverted; that they have nothing to fear, indeed, from any other cause than the weight and bearing of the evidence, as it shall be made to appear in the course of the present investigation.

With these preliminary remarks which have appeared to me, gentlemen, as not being unsuitable to the occasion, I now proceed to make my statement of the case which is about being submitted to your decision.

The Indictment is for the crime of Murder, committed on board a vessel called the Plattsburgh, "*upon the High Seas, out of the jurisdiction of any particular state;*" and it is founded on the 8th Section of the Act of Congress, of April 30th, 1790. For the commission of this crime, under the circumstances alleged in the indictment, it is provided in the same section of the Act, that the offender shall be deemed, taken and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death; and furthermore, that the trial of crimes committed upon the high seas, or in any place out of the jurisdiction of any particular state, shall be in the District where the offender is apprehended, or into which he is first brought; and that District is alleged, in the indictment, to be the District of Massachusetts.

In attending to this indictment, as it was read to you by the Clerk, you will have perceived that it contains two several independent Counts, or statements of the case; and it is proper for me, at this time, to explain to you the grounds upon which it was deemed expedient, if not absolutely necessary, in point of law, to lay the charge in this variety of modes.

It is a familiar rule of law, that in every indictment for murder, the manner of the killing must be described, substantially, in conformity with the facts as they shall appear upon the evidence. Accordingly a murder by poison or drowning could not be shewn in evidence upon an indictment alleging the death to have been occasioned by means of shooting, or the infliction of blows. Now from the evidence, as it was disclosed before the Grand Jury at the finding of this indictment, it appeared, at least doubtful, whether *Thomas Baynard*, the person alleged to have been murdered by the defendants at the bar, came actually to his death by reason of the wounds which will be proved to have been inflicted upon him while on board the vessel, or whether there was not some portion of life remaining until after the body was consigned to the ocean. For the

sake of that "*greater caution*" which should always be observed in regard to a process of so serious a nature as the one now in question; it was deemed prudent, therefore, to set forth the circumstances in the manner adopted by the indictment; although I apprehend, that the description which is given of the manner of the killing in the second count in this indictment, will be found exactly conformable to the state of my evidence.

[Here the District Attorney read to the Court and Jury the section of the act of Congress upon which the indictment was predicated; and from East's Pleas of the Crown, the general definition, at common law, of the crime of murder. At the same time, also, he read, from the last mentioned authority, several passages, relative to the doctrine of principals and accessaries, in cases of felony, for the purpose of shewing, that all who are present, aiding or abetting, &c. &c. by word or by deed in the commission of a murder, though not instrumental in the actual perpetration of the deed, are nevertheless to be regarded in the light of principals, and should so be described in an indictment for the offence.]

These, gentlemen of the jury, are the only portions of the law relative to the case now on trial, which I shall have occasion to cite to you throughout the whole course of the present investigation. In criminal, and even in capital causes, it has not unfrequently occurred, and it certainly is unfortunate whenever it does occur, that the most perplexing and embarrassing questions in the cause, are mere questions of law, arising from the state of facts which have been developed at the trial. Not so is it, and I derive much relief from the circumstance, in the case now under consideration. The whole law of this cause is perfectly *plain*, *express* and *intelligible*. It is only for you to understand that the statute of the United States has denounced a punishment upon the crime of murder when committed upon the high seas, under the circumstances set forth in the indictment; that the crime of murder consists "in the unlawful killing of a human being with malice aforethought, either express or implied," and that the aiders and abettors are in equal guilt with the immediate agents in the mischief; and I will venture to pronounce, that with this little information of the law, you will be enabled to form, with as much promptitude, as could any lawyer at the bar, or even any judge on the bench, a correct legal decision upon the facts which will hereafter be submitted to you: For, gentlemen of the jury, it will be made most apparent, that either no crime has been committed; that the evidence which will now immediately be laid before you, is entirely an illusion, a fabrication; the mere result of the most base and wicked perjury; or, that the case on trial, is no other than a case of the most foul, deliberate and diabolical *Murder!*

[Here the District Attorney proceeded to state to the jury with much minuteness, the whole series of facts and circumstances, which were expected to be established by the testimony of the witnesses to be adduced on the part of the prosecution;—after which the witnesses for the prosecution were called and sworn.]

George C. Read sworn.

District Attorney. Have you the command of the Hornet ?

Witness. I have.

Dist. Att. From what port did you sail last ?

Wit. From Copenhagen.

Dist. Att. Did you bring the prisoners at the bar to this port in the Hornet ?

Wit. I brought home four of them.—[All except Peterson.]

Dist. Att. Is Boston the first port in the United States at which you arrived ?

Wit. This is the first port in the U. States at which I touched.

Cross Examined.

Mr. Knapp. From whom did you receive the prisoners at Copenhagen ?

Answer. From the Judge of the Police.

Knapp. Did you receive any papers with them ?

A. No. The papers were given to Mr. Forbes, as I understood.

The Counsel for the prisoners admitted that Peterson was first brought into this district after the crime was committed.

Isaac M'Kim sworn.

Dist. Att. Were you the sole owner of a schooner called the Plattsburgh ?

A. I built her myself, and was the sole owner.

Dist. Att. Are you a citizen of the United States ?

A. I am.

Dist. Att. Did the Plattsburgh sail from Baltimore, and when ?

A. I commenced loading her June 28th or 29th, 1816, and she sailed from Baltimore about the 1st of July, bound for Smyrna.

Dist. Att. Of what did her cargo consist ?

A. Of ten or eleven thousand pounds of coffee, and forty-one or forty-two thousand dollars in gold and silver.

Dist. Att. Who was on board of the Plattsburgh ?

A. William Hackett was the master, Yeiser the first mate, and Stephen B. Onion the second mate.

Dist. Att. Was there a colored man on board ?

A. I can almost say that there was a colored man, the steward, named Samberson.

Dist. Att. Who was the supercargo ?

A. Thomas Baynard, a native of Maryland.

Dist. Att. Was William Hackett a citizen of the United States ?

A. He was, and sailed several times out of Baltimore.

Dist. Att. Have you heard from the master or mate or supercargo since the Plattsburgh sailed ?

A. I have not, since they passed Cape Henry. I heard of a mutiny on board, and sent to Boston to inquire of the master of the vessel which brought the intelligence ; and soon after I received a letter from the consul at Christiansand. On the 1st of April, 1817, I despatched Mr. De la Roche to bring the vessel home, which he accomplished.

Dist. Att. Had these officers families ?

A. They were not married.

Cross Examined.

Knapp. Are you in the habit of keeping copies of the shipping papers of your own vessels, or have you the shipping paper of the Plattsburgh ?

A. I have not.

Knapp. Do you know any of the prisoners at the bar ?

A. I cannot say that I do.

Dist. Att. Do you know the names of the crew of the Plattsburgh ?

A. I of course saw them in the rolle d'equipage, but I cannot recollect them. The master told me he had got good men. The officers I was acquainted with personally.

Capt. De la Roche sworn.

Dist. Att. Did you go in quest of the Plattsburgh by Mr. M'Kim's direction ?

A. Yes. I sailed from Baltimore on the 7th of April, 1817. I found the vessel at Christiansand on the 18th of June, and I arrived in this country with her on the 1st of September. Christiansand is about 60 miles from Mandahl.

Dist. Att. In what condition did you find the vesel ?

A. She had been new painted, and the main boom and jib boom were new. She was in good condition, and only wanted caulking.

Dist. Att. Was she a new vessel ?

A. Almost new.

Court. Did you bring home any of the cargo ?

A. No. I brought home some empty bags. The cargo, or part of it, was sold by Mr. Isaacson. I brought home from him an account of the proceeds of part of the cargo, but none of the proceeds themselves.

Cross Examined.

Knapp. Did you not sign a receipt for the proceeds, at Christiansand ?

A. I signed a receipt for money I received for the use of the vessel, and at Hamburg I received the proceeds of another part of the cargo.

Stephen B. Onion sworn.

Dist. Att. I wish you to state particularly and deliberately, every circumstance within your knowledge, relating to this transaction. What is your name ?

A. Stephen Burnet Onion.

Dist. Att. Where were you born ?

A. In Hartford County, Maryland.

Dist. Att. Have you a family ?

A. Yes. I have a brother and sister living in Baltimore ; my parents are dead. I am not married.

Dist. Att. What has been your course of life ?

A. I have been a mariner. I have sailed out of Baltimore since I was fifteen years old.

Dist. Att. Were you ever before in the employment of Mr. M'Kim?

A. Not before this voyage.

Dist. Att. Did you ship on board the Plattsburgh?

A. Yes.

Dist. Att. When?

A. Before she sailed from Baltimore.

Dist. Att. In what capacity?

A. As second mate and boatswain.

Dist. Att. Of what did the cargo consist?

A. About six hundred bags of coffee, and forty-two thousand dollars in money.

Dist. Att. Who were the officers?

A. William Hackett was master, Frederick Inglehart Yeiser chief mate, myself the second mate, and Thomas Baynard super-cargo.—The cook was a Spaniard, and Edmund Samberson, captain's steward.

Dist. Att. What were the names of the crew?

A. John Williams, Nathaniel White, Francis Frederick;—Frederick was not on the articles;—Stacey, John Smith, Peter Peterson, Johnson, and some others; making in all eleven before the mast.

Dist. Att. By what name did White enter?

A. By the name of Nathaniel White.

Dist. Att. Were the men at the bar part of the crew?

A. Yes.

Court. Are you positive that these five men were a part of the crew?

A. I am.

Dist. Att. When did you sail from Baltimore?

A. On the first of July, 1816.

Dist. Att. State particularly the transactions which took place after that time.

Wit. We dropped down to Purchase's Creek. Some difficulty arose on account of the protections. The crew, some of them, were unwilling to weigh, unless the captain would first give them their protections. On the fourth of July, we came off Cape Henry. Smith was ordered by the chief mate to sweep the deck; he returned a saucy answer, and said he meant to sweep in his own country fashion. A quarrel ensued between them; he threw the mate down; I went to the assistance of the mate, and then told the captain what had taken place. He came upon deck, and said he would knock any man down with a hand-spike, who should offer resistance to the mate. We went on peaceably until July 21st. On the 21st July, at 12 o'clock, M. we passed St. Mary's. This was Saturday. The crew were divided into two watches. The first watch, under the chief mate, did duty from 8 o'clock in the

evening to 12; and mine from 12 till 4 o'clock in the morning. At 12, I was called upon deck by the first mate. As I came up, I heard John Williams cry out—"sail, ho!"

Dist. Att. Is Williams among the prisoners at the bar?

A. Yes; he is the short one. As I was making water in the waist, I saw Frederick between the camboose and mainmast. I asked him where the sail was; "go forward," he said, "and I will shew you." I did so, passing on the larboard side; the chief mate passing at the same time on the starboard. The chief mate passed over the boom, and came by my side, at the bow. While we were looking over the side of the vessel we both received a blow at the same time. I did not know at first what struck me; I supposed it was the foot of the jib which struck me on the head. I fell upon the deck and immediately *scuffled* to windward. As I lay upon my hands and knees, John Williams caught me by the breast. That minute I heard the chief mate scream murder. Williams said, "here is one of the damned rascals—come help me kill him." I cast my eye over my left shoulder, and saw some one aiming a blow at me. I was told by John Williams—

Knapp. Stop—you will not say what he told you.

Wit. I lifted up my arm and received a blow on it which injured it very much. I could not use it for fifteen days. A small piece of the bone came out. This blow knocked me down.

Dist. Att. Who stood round?

A. Three or four—Williams was one.

Dist. Att. Did Williams say any thing?

A. Not that I heard.

Dist. Att. Where were Baynard and Yeiser and Hackett assaulted?

A. Yeiser was knocked down forward. The captain came up and said, "what's the matter forward?" They all immediately left me and jumped towards the captain. I immediately jumped up and passed aft on the larboard side, going by a man with an axe on his shoulder, whom I took to be Raineaux. Daniel Went was at the helm—he said, "my God, Mr. Onion, what is the matter?" I told him I could not tell him. I then went into the cabin. Mr. Baynard was then just out of his birth, rubbing his eyes; Samberson was lying in his birth. I made my way into the bread locker. First after this I heard them call Baynard up.

Dist. Att. What words did they use?

A. They merely called him up—they said the captain wanted him—Baynard said, "where is the captain? I want to put on my clothes." "No, no," they said, "the captain wants you forward"—"No, no," in a sharp way of speaking. I then heard a scuffle.

Dist. Att. Was there a light on deck?

A. Yes, in the binnacle.

Court. Do you know that the prisoners, any besides Williams, were on deck at this time?

A. I do not. Directly after this, two of the crew came below. They said, "where is Onion."

Dist. Att. Who asked the question?

A. Williams. They all asked, one of another; I do not know who in particular. Some said, "he is overboard;" Frederick said, "no, I know where he is, he is in the locker." They ordered me out of the locker. I began to beg for life. They then had a consultation about throwing me overboard. Some said yes, and some no. Peter Peterson was one—Francis Frederick was one—John P. Rog one. Peterson was in favor of throwing me over. He said, "damn him, he's one of the officers—throw him over with the rest." Frederick said, "no, he is a clever fellow; he will take a share of the money with us;" and Williams said, "no, no, we have shed innocent blood enough—let him live."

Dist. Att. Did either of the prisoners have a musket in his hand?

A. I did not see any until afterwards.

Court. Did you see White?

A. Not until next day.

Court. In which watch was White?

A. In the chief mate's, from 8 to 12.

Court. Were there more persons on deck when you went up, than belonged to the first watch?

A. I think there were; it was about the time for changing the watch.

Dist. Att. Did they conclude to let you live?

A. Yes, they did. Frederick called to me to come out. Thinking they meant to kill me, I put out my head that they might despatch me if they would. They then said, "damn you, come out—what are you afraid of—we are not going to hurt you." I then came out; they handed me a glass of whiskey, and made me swear that I would be true to them and take a share of the money, and not inform against them. I remained below until next morning.

Dist. Att. Was there in fact any vessel ahead?

A. No, there was not.

Dist. Att. Who were present when you took the oath?

A. Williams, Stromer, Rog and Peterson were in the cabin at the time.

Dist. Att. Did you hear them call for coffee?

A. No, I did not.

Dist. Att. When did you see White?

A. White came down with Stromer about 4 o'clock to get a glass of grog.

Dist. Att. Did any conversation take place between them?

A. Yes, they talked about the place to which the vessel should be carried. White asked Stromer where he intended to carry her. Stromer said to Norway; White said they had better go to South America with her. Stromer said no, that he had been a trader at Norway before, and was acquainted with the coast. That they could carry the vessel in among the rocks and smuggle the cargo without being suspected. After this they went upon deck. Between 9 and 10 o'clock Smith called me up. They all of them then went

below, broke open the hatches, took the money, and carried it upon deck.

Dis. Att. Who seemed to be the principal man among them ?

A. They were all the same as one as to the ordering.

Dis. Att. Where was the money ?

A. In the run. When they got it upon deck, they broke open the boxes and divided it into fourteen shares, measuring it out at first in their hats ; and at last, when the quantity was small, in a tin pot. When the division was made, they were called to take their shares. Williams said, "Onion, there is your share." I said I did not want any money; that I was thankful for my life. Raineaux said that I must take it, or they would serve me as they did the rest. Upon this I took my share, carried it below, and put it in an open chest, without counting it, where it remained until we arrived off Ireland.

Q. Who acted as officers?

A. Stromer acted as commander, Williams as chief mate. Stromer and Williams and Frederick, told me, if I would do my duty as before, as second mate, I might. When my money had remained sometime in the open chest, they asked me why I did not take my money and count it. I thought it might be suspicious if I did not, so I counted it, and I found it amounted to about three thousand dollars.

Q. Who asked you the question?

A. Stromer, Williams, Johnson, Peterson and Smith, several by asked me. After the division of the money, the vessel was hauled for Norway.

Q. Did you hear any conversation respecting these transactions?

A. I heard Peterson and Smith one day talking of them. Peterson said the Captain caught him by the jacket, and had like to have thrown him overboard. Smith said the captain had hold of him, and like to have got him over, that he got him half way over the railing. I heard Williams say, as we were going from Norway to Copenhagen, that if he lost this money, he would get some more in the same way. At the same time he told me that he and Francis Frederick had shaken hands upon it, at 8 o'clock the night before they took the vessel, that they would take her or jump overboard.

Wit. I heard Frederick say, this was the fifth vessel he had served in the same manner. Williams at the same time said, "I'll be damned if I sail out of the United States or any other port, at fourteen dollars a month."

Hooper objected to an examination of this kind, but the court overruled the objection.

Wit. The next day after the killing of the officers, Rog, who could speak but little English, and to whom we had given the nickname of *Yankee Boy*, was cutting capers about the deck, and said "you now see what a yankee boy can do," referring as I understood

him, to the part he had taken in the transactions of the preceding night. Near St. Mary's, Williams was near the fire with a cigar in his mouth;—I spoke to him, and he turned round hastily, and I saw something, which he dropped in the fire, burn blue. Williams after the transaction of the 22d July, told me, that he intended then to poison the officers by putting poison in the coffee. He said too, they had laid a plan for binding all the officers near St. Mary's, while we were taking the sun, and putting us ashore in the boat; but that their hearts failed them. He said that he had got as far aft as the camboose with a seizing in his bosom for this purpose, but the others would not follow him, and he was obliged to give it up. I think when all hands were on deck he said this.

Court. Did you ever hear White say any thing to shew what part he took in the transaction of the 22d July? Or to show that he was led into it?

A. In working the vessel, White was as active as the rest; but he always told me that he was innocent, and would never take away a man's life to get money; he said he was afraid to resist; that at one time he had a notion of informing, but did not dare to do so. He took his share of the money.

Q. When did White say this?

A. On the day when the money was divided he told me this.

Q. How many days were you in going to Norway?

A. Twenty two days.

Q. Was any alteration made in the papers?

A. Yes. Williams and Stromer directed me to copy the letter of Mr. M'Kim, and consign the vessel to G. & G. Myers, at Hamburg. Williams altered the log book, making the vessel bound to Bremen instead of Smyrna; cutting out the leaves containing all that had been written from the time we passed Cape Henry, up to where we were at the time of the murder. We went to a place called Cleveland, in Norway, where we lay four or five days, to the best of my recollection. The last day I staid on board, they had a notion of hauling round to Mandahl. That morning Williams asked me if I wanted a passage to Denmark;—I told him yes. He told me to put my things on board a vessel at Cleveland, which was bound to Copenhagen—a boat was sent, and I put my things on board—Williams put his on board too; Samberson went with us. We sailed for Copenhagen, and had a passage of three days.

Q. Where were the rest of the crew?

A. I do not know. They were on shore most of the time we were at Cleveland.

Q. Did you go on shore then?

A. I went only once, and then Williams went with me. He kept near me all the time, and would not let me go two yards from him.

Q Did you think he was watching you?

A. I did. At Copenhagen we staid fourteen days; Williams and myself at the same house. Williams fell in with a Captain

Nelson, and took some sugar and rum of him, and asked me if I would not take some. I told him I would. He said we could go to Christiana and find a vessel for America. On Saturday following this, a vessel was ready to go to Christiana. We went on Saturday night to get a pass, and were then taken up by the police and put in prison.

Dist. Att. Did you know why you were imprisoned?

A. I did not know why, unless upon suspicion. Williams and myself were the only ones imprisoned that night. We were examined on Monday morning, when I stated the whole of this business to the police. It was always, from the first moment, my intention to make a disclosure. At Mandahl I was so much in liquor, I could not do it then. All the time at Copenhagen it seemed like a dream. Williams was with me most of the time.

Q. Were you examined when you were first put into prison?

A. They only asked me where I was bound, and what my business was. I was kept in confinement until I was put on board the Hornet.

Q. Where was Samberson during the mutiny?

A. In his birth. They had determined to spare him. The Spanish cook cried a great deal the morning after the affair, and said, "O! my God, they have thrown my good captain overboard." Peterson and Smith talked about throwing overboard—they said the mate caught hold of the flying-jib-boom-guy, and they had to cut it. I saw it was cut.

Q. Did you see any blood?

A. Yes; near where the guy was cut there was a little; Frederick said he cut his thumb. The day after the murder, at breakfast or dinner, Williams said, that the captain, when he was thrown overboard, cried out, either "Williams," or "men, don't you know me?" Williams replied, "yes, damn you, to my sorrow." Williams said, that in a former quarrel, the captain threatened to shoot him, and he owed him a grudge. He said he had been three times condemned to be hanged. Once was for killing a man in South America. Another time was for hanging a woman.

Q. Did you ever after that night see Baynard, or Hackett, or Yeiser?

A. No; I heard some of the men say they were overboard. I often heard White say, when he was trying to cheer me up, "poor fellows, they are overboard, but there is no helping it now."

Q. What was done with the clothes and watches of the master, and supercargo, and first mate?

A. Stromer and Williams divided them between themselves.

Captain De la Roche again.

Dist. Att. Did you take from either of the prisoners a pair of pistols?

A. I was appointed the agent of the executors of Capt. Hackett. I called at the police office, and the officer asked me if I

could identify any articles. I told him I had a description of a pair of pistols that belonged to Capt. Hackett; the officer shewed me a pair that corresponded, which, he said, were taken from Williams.

Knapp. That will not do.

Dist. Att. Was not Williams present?

A. No; it was before he came in.

Onion again.

Dist. Att. Had Williams a watch with seals?

A. Yes.

Q. Did one of the seals belong to Baynard?

A. Yes.

Q. Could you identify it?

A. Yes.

[A seal was brought into court during the trial, which the witness said was the same.]

Cross Examination.

Knapp. Had Williams any thing in his hands when you were struck?

A. No.

Knapp. What was the weather?

A. It was a dark night—no moon—it was a drizly rain—wind to the southward—had been northerly—cloudy.

Knapp. At what rate were you sailing?

A. Between five and six knots.

Knapp. How long was it from the time you went upon deck to your getting into the bread locker?

A. About thirty-five minutes.

Knapp. How long had you been there when you were called out?

A. About ten minutes.

Knapp. Where did Baynard and Samberson sleep?

A. Baynard on the larboard side of the cabin, and Samberson abaft the binnacle.

Knapp. Was there any light on deck except in the binnacle?

A. No.

Knapp. Was there a light in the cabin?

A. Yes, on the table.

Knapp. Had you any apprehension of danger after this transaction?

A. I went on from day to day in dread of my life.

Knapp. Did you not act as mate to give orders?

A. Stromer was the principal man, and Williams the second. I went on the same as before.

Knapp. Did you know that Stromer understood navigation?

A. Not before.

Knapp. How often were you on shore in Norway?

A. Once only, and then but two or three hours.

Knapp. How long was your passage from Norway to Copenhagen?

A. Three days.

Knapp. How long were you at Copenhagen?

A. Fourteen days.

Knapp. What reason have you for not making a disclosure in Copenhagen?

A. I drank too much, and was a stranger, and was ignorant how to proceed, having never been concerned in any thing of the kind before.

Knapp. What became of your money?

A. It remained at my boarding house.

Knapp. By what name did you go at Copenhagen?

A. I passed under the name of Yeiser. I had lost my protection. Williams told me to pass for Yeiser and take his protection, which he gave me.

Knapp. Was not Williams drunk when he made these swaggering confessions of murders?

A. Not that I know of.

Knapp. Did you not feel afraid then of his hanging you next?

A. I hardly know how I felt.

Knapp. How came he to place so much confidence in you at Copenhagen, as to tell you of his murders, when at Cleveland he watched you so narrowly?

A. He told them before we arrived at Cleveland.

Q. Why did you engage in trade with Williams?

A. He said it would be a good speculation; so I took six hogsheads of rum and six of sugar.

Knapp. Did Samberson divide the money?

A. I do not know;—he took his share. We kept up a cheerful face to avoid suspicion.

Knapp. Do you know what Samberson's thoughts were?

A. I do not.

Knapp. Did you receive any of the captain's clothes, or did Samberson?

A. I did not. I saw Samberson with two pair of boots. He took the chief mate's trunk and clothes.

Knapp. Could you have made your escape?

A. I had an opportunity, had I been sober.

Knapp. Did Williams know any thing of navigation, and was he sober?

A. He was sometimes sober, and sometimes in liquor. He did not understand navigation.

Knapp. Did you not come out of the bread locker drunk?

A. I had drank some brandy; but how I got it, I do not know.

Knapp. Did you not take the decanter of brandy into the locker with you?

A. I did.

Dist. Att. Why did you drink the brandy?

A. On account of my fears.

Knapp. Whom did you see when you came on deck that night?

A. Williams, Frederick and Raineaux, by the camboose.

Knapp. Did you not open the boxes of silver with the axe?

A. No.

Knapp. Who divided the money?

A. Williams and Stromer and Smith.

Knapp. Who told you about the poison and the binding the officers?

A. Williams told me it was poison that was put in the coffee, and he told me about the binding.

Knapp. What papers did you alter?

A. I only copied the letter of Mr. M'Kim.

Knapp. Did you not show Williams how to keep a log book?

A. No; Stromer did.

Knapp. Did you not take a watch from Yeiser?

A. No, they gave it to me.

Knapp. Had you it in Copenhagen?

A. Yes.

Edmund Samberson sworn.

Witness. I was born in Philadelphia—am twenty-nine years old—have sailed out of Philadelphia eight years—was the steward of Capt. Hackett in this, and in a former voyage—was on board of the schoonerPlattsburgh in July, 1816—William Hackett was master, Frederic Ingelhart Yeiser mate, and Stephen B. Onion second mate. The vessel had coffee on board, and 42,000 dollars in money. She sailed the 1st of July bound to Smyrna. In the bay, on the second day, there was a dispute between the mate and some of the crew,—Smith and Williams and others. The captain was below—I told him what was the matter. He came up and said he would knock down with a handspike the first man who struck an officer. There was some difficulty about the protections soon after we left Baltimore. Some of the crew wanted them before the captain was willing to give them over to them. The captain gave them their protections. The prisoners at the bar were a part of the crew. There was a plan to take the vessel. White knew of it, but would not inform. Some days after, ten or twelve days, we passed St. Mary's; I heard a noise upon deck. I heard the voice of Williams; he said, "you damned son of a bitch, come on deck." He did not call any one by name. I saw Baynard in the cabin rubbing his eyes. I did not speak to him, nor he to me. I attempted to go on deck, and saw persons as thick as they could stand about the companion way. I attempted twice to go up, but started back. John Smith says, "come up, you damned son of a bitch, you have made your fortune when you don't know it." I then went higher, and they caught hold of me and drew me up by force. Stromer was one. They ordered me forward. I went as far as the main mast, and came back again I looked under the main boom, and saw the supercargo lying on his back. There was a light in the binnacle. I heard the sailors speak to Baynard to come upon deck, "they would not hurt him." When I got aft, I saw him lying his

whole length on the starboard side. He was then seized by Williams, and, if I am not mistaken, by Aleck, who was sometimes called Jans Rog, and thrown overboard. The quarter was crowded, all were there except the cook and second mate. In less than two minutes I heard the voice of Baynard in the water. I went forward and asked the cook what was the matter; he said, he did not know. He was crying. I went aft and asked liberty of Stromer and Williams to get my shoes and hat, in the cabin; they said I should not. Stromer wanted the captain's pistols; I told him I did not know where they were; he called me a damned liar—I said I did not know. I went forward. Williams told me if I did not work the ship I should share the fate of the others. I laid hold of the top sail brace, White took hold of the fore brace. White said nothing. Williams had the chief command. He jumped round the larboard side of the camboose, and said, "bear a hand, boys, the ship is ours." I got leave to go down. Frederick was in the cabin with a musket in his hand; some of them came down.

Dist. Att. What was he doing with the musket?

Witness. They were looking for the second mate. The musket was cocked. Frederick asked me for the keys—They called out, "on deck there, send down the studding sail halyards, and let us hunt the bugger out." White, Peterson, Smith, Johnson and Raineaux came down. They opened the captain's locker, and found the mate. They made him come out; he begged for his life. They consulted together, and concluded to spare his life. The mate says to Frederick, "I am thankful to you, you have saved my life." This was his conversation the whole passage. Frederick and Williams were in favor of the mate's life being spared;—this I learned afterwards. I did not hear the particulars of the conversation at the time. I was afraid to speak. Stromer told me to draw some liquor. They made the mate and me sit down and drink, and told us not to be frightened, "they would not hurt us." After twice drawing liquor for them, Stromer told me to make some coffee;—White said "it was damned nonsense, they did not want any." None was made. They told the mate and me, that we might continue in the same capacities. The mate did so. Stromer ordered me to kill a pig and have breakfast early next morning in order to share the money. Williams, Stromer and Onion were at breakfast in the cabin, and I tended. Williams and Stromer were talking over what took place the night before. Williams said the captain came up and asked what was the matter. Williams answered, "you damned rascal, I will let you know." Williams said that when he had hold of the captain to throw him overboard, the captain said, "Bill, don't you know me?" he answered "yes, you damned rascal, to my sorrow." Williams said he would never work for fourteen dollars a month, when he could make three thousand. Afterwards the money was divided. Williams said he had a grudge against the captain, because in a former voyage he had bad bread, and he complained of it, and the

captain quarrelled with him, and threatened to shoot him. The boxes of money were all broke open. It seems to me all hands were employed in bringing the money on deck. White passed it out of the cock-pit. It was divided in bags, and after a bag was set apart for each man the residue was measured in tin pots. Onion was called first to take his share; myself next. Some of them took their shares in their hats. Afterwards we made all sail for Norway. Stromer was made captain, Williams first mate. Onion on receiving his share of the money said, "it was handsome, he had not had so much for a long time." We made land in fifteen days. Some were for taking a boat to go to Scotland, some to England, and some to Norway. We took two fishermen on board as pilots, and Stromer desired to be carried to a place where there was no consul.

Knapp. Did Onion say he was thankful for his life, at the time he received his share?

A. No, but several times during the voyage. When I went on deck, I passed close by Rog, standing by the windlass. Williams frequently talked of his adventures. About his being accused of murdering his sweetheart. Stromer said he gave Williams poison to put into the coffee, and Williams said he put it in, but it was not strong enough. The captain, supercargo and mate complained of the coffee, and had to take medicine; and they thought hard of me. The crew were laughing. On deck I heard some one of the sailors speak of binding the officers off St. Mary's. Something was said about Stromer's having been looking out for a vessel like this for three months.

Dist. Att. Did you hear any thing about cutting the guy?

A. No. Stromer and Rog talked together in an unknown language; Jans Rog told Stromer what port to go to. The fishermen said they would carry us to Mandahl. The custom house officers came off, and put a quarantine flag on board. The papers were not altered until we arrived at Mandahl. Stromer was called Hackett, and Williams went by the name of Yeiser, and Onion by his own name. Some names were rubbed out; there were seventeen in number at first. I stood near and saw them altering the papers.

Dist. Att. Can you read writing?

A. I cannot. I went to the consul's house to tell him the circumstances. The clerk said he was not at home. I went the next day again, and then I saw Smith and Stacey and Williams and Raineaux and Went near there. I left the vessel the day after she was taken to Mandahl, and went in a fishing vessel to Copenhagen with Williams and Onion. On our arrival I went to the same boarding house with Williams and Onion, but they would not let me stay there. When I had been in Copenhagen about three weeks the commissary of police sent for me one morning at about five o'clock. I went to him, and he inquired what was my business and who Williams and Onion were; I told him I had no particular busi-

ness, that I was waiting for my eye to get well; I disclosed all the circumstances of the transactions of the 22d July. He asked me if any more of the crew were in Copenhagen besides Williams and Onion. I told him Rog was there. He sent three officers with me, and I carried them to Rog's lodgings. They took him and his effects to the Police office. One end of his trunk was heavy.

Dist. Att. Do you know how the police got information?

A. I do not, but I understood they had heard of an American vessel being deserted by the crew. Williams was going to sail the next day, and went to the consul for his pass; he called himself a merchant. The consul gave him a line to the police, requesting them to arrest him. Williams, Onion and Rog were then taken up.

Dist. Att. Were you and Onion confined separately?

A. We were for about two months. Then we were put together until we fell to fighting. We could talk with each other from the windows when we were separated.

Dist. Att. Was any oath of secrecy taken by Onion, on board the Plattsburgh?

A. I do not recollect it; if any was administered, I was not present.

Dist. Att. Was Onion's arm much injured?

A. Onion had his arm wounded, with an axe, as he said, and was confined in the bed room.

Dist. Att. Did you ever hear any one of the prisoners deny that he was engaged in the mutiny?

A. I never did. Two days after it happened Jans Rog jumped up and struck his heels together, and said, "he struck the son of a bitch *(Baynard)* with a stone in a stocking."

Court. Did White appear to be engaged in it?

A. I did not see him engaged, and I did not hear him say any thing in particular. He appeared more mild than the others. He said one day, on deck, that he knew of the conspiracy, but would not give information of it.

Cross Examined.

Knapp. Whom did you see first, when you came on deck, on the 22d of July?

A. I saw Stromer, Rog, White and Williams.

Knapp. At what time did you have breakfast that day?

A. At half-past eight.

Knapp. At what time did you see White on deck in the night?

A. At about a quarter-past twelve.

Knapp. Did he say any thing?

A. I did not hear him say any thing that night.

Knapp. Who came into the cabin to search the bread locker?

A. Smith, Peterson and White came down.

Knapp. What did White say?

A. He was laughing and talking, but he said nothing about killing Onion or sparing his life.

Knapp. Had you any of the Captain's clothes?

A. I had a coat and pair of pantaloons, only.

Knapp. How many pair of boots had you ?

A. I had two pair; which were given me in Baltimore.

Knapp. You were unable at Mandahl to give information because some of the crew were at the consul's. Were you watched in Copenhagen by Williams and Onion ?

A. I was not. I did not think it worth while to inform at Copenhagen, because the crew were dispersed in different places; and Williams and Onion had sworn, that any one who opened his lips, should lose his life.

Knapp. Why were you anxious to make a disclosure at Mandahl, and not so at Copenhagen ?

A. Because all the crew might have been arrested at once, at Mandahl.

Knapp. How many might have been seized at Copenhagen ?

A. Four.

Knapp. Four then were not worth taking ? Did Rog board with Williams and Onion, at Copenhagen ?

A. No. Rog came there after we did. I met him one day in the street; he seemed ashamed, and held down his head, and did not want to speak to me.

Knapp. Between whom was the conversation at the breakfast table ?

A. Stromer, Williams and Onion. I did not hear Onion say any thing, but he was eating away. Williams mentioned that he had killed a man in Spain, belonging to the artillery; said he escaped punishment, and that "if he could weather that, he could weather hell."

Knapp. Did you ever hear White say he participated in the murder of Baynard ?

A. No, I never did. White was very sly. He used always to be singing and telling stories to the crew.

Onion called again.

Knapp. Who came first to the locker ?

A. Francis Frederick.

Knapp. Did you see White at the time ?

A. I did not see him till about four o'clock.

Knapp. How many were in the cabin ?

A. Eight or ten, I suppose.

Knapp. Have you any doubt about White ?

A. I cannot swear one way nor the other; they were all standing up; if White was there, I do not recollect him.

Knapp Did you hear any conversation at breakfast respecting the captain's saying, "Williams, don't you know me ?"

A. I did not.

Mr. M'Kim.

Dist. Att. Describe the locker of the Plattsburgh.

Witness. The Plattsburgh is a sharp Baltimore schooner, with four births only in the cabin—has a great rake aft—the lockers are on the sides of the births—she is broader on the transum than most vessels of that class. When I first heard of Onion's get-

ting into the locker, I hardly believed it, and I went to examine it after the vessel returned, and I was still inclined to doubt; but it seems he did get into it.

Onion called again—said the lockers communicate. That he entered the after locker, head foremost, and came out of the forward locker.

The court was now adjourned until the next day at nine o'clock.

TUESDAY, DEC. 29th.

Mr. M'Kim was again called upon the stand.

District Attorney. State what part of the cargo has been recovered.

Witness. I lost nothing myself, as I was fully insured. The underwriters appointed me their agent to collect such part of the cargo as it might be possible to recover. I went to Washington and called upon Mr. Monroe, then Secretary of State. He told me that Government was disposed to do all in its power to get as well the money, as the men; and he proposed sending circular letters abroad. Stromer put the coffee into the hands of Mr. Isaacson, the consul at Christiansand. I wrote to Isaacson, and enclosed a circular. Isaacson sold the coffee, and has remitted by my order, to the Messrs. Barings, £800 sterling, and has in his hands £1200 sterling more. I received a letter from Sabic, the consul at Copenhagen, giving intelligence that some of the crew were arrested and $5000 found upon them, which sum has been received. These sums are all that has been recovered of the cargo.

Mr. De la Roche, called again, stated that the pannel of the locker was fifteen inches high, aud from fifteen to eighteen wide; that he could get into the locker himself; that he had put his head and shoulders through the opening, and that after passing the aperture, there is room enough.

S. B. Onion, called again, being questioned, testified that after he left Norway, he passed by the name of Yeiser—that when the papers were altered, Stromer's name was put in the place of Hackett's, Williams's in that of Yeiser, and his own remained unaltered—that Frederick, Williams, Went and Stromer were in his watch.

The evidence on the part of the government being closed, and the prisoners having none to offer, Mr. HOOPER addressed the jury, in substance, as follows:—

May it please your Honors,
Gentlemen of the Jury,

IT is incumbent on me, gentlemen, by the assignment of the honorable court, to address you in defence of the prisoners. For their sakes, I regret, that any part of this arduous and unpleasant task, has devolved upon me; for however abject and forlorn may be their condition; however destitute of friends, or sympathy—foreigners most of them, and all of them strangers—far from those

who might testify in their favor, or aid them in their peril; they are but the more entitled to all the assistance which ability and experience can yield, on the part of those selected to defend them. The scene which is presented to you, gentlemen, is of rare, and perhaps unparalleled occurrence in this land. Five men—yoong men—in the vigor of their days—standing together, charged with the commission of a crime, which, if proved, must consign them all to an immediate grave; is a spectacle, whose solemnity the most thooghtless cannot disregard, and which imposes the most tremendous responsibility on those to whose judgment it is submitted. The prisoners' counsel, gentlemen, on this important occasion, have been unavoidably limited to a very few days, in which, amid other avocations, to prepare the defence; and they have been necessarily onacqoainted, until the close of the testimony, the last evening, with the precise shape which it might assume before you. The prisoners, gentlemen, have no witnesses. They cannot, like the government, select one or two from their number, and place them upon that stand, to testify in their favor; and yet, why should not men, thus called upon to defend their lives, be entitled to the privilege of testimony from the same source as the accuser? There are other circumstances of peculiar disadvantage, aside from any question of guilt, with which the prisoners are obliged to contend. It is a long time, since the report of an appalling deed of piracy and blood on board this vessel, reached us. It produced the excitement, which is so natural, particularly in a part of the country devoted to commercial pursuits; and of course deeply interested, in every thing which is connected with the lives and fortunes of commercial men. This excitement was continued, by hearing at one time, that the criminals had been detected; at another, that a national ship had been sent to bring them here. We heard of their embarkation—their departure—arrival. We saw these unfortunate men at the bar, marched through our streets, surrounded by bayonets, and in fetters, and we came at last to mistake our horror at the crime, for evidence of the guilt of the suspected persons. We hardly remembered, that accusation is not proof; we seemed to have made up our minds on the subject, and to wait for nothing, but judgment and execution. Gentlemen, it cannot be necessary to say to you, in so far as *you* may have shared in these prejudices and feelings; with what scrupuloos anxiety, you are bound to banish them from your minds. The prisoners have solemnly declared their innocence, and appealed to their "God and their country" to confirm it. You are that country, gentlemen. As its selected representatives, performing the most solemn duty, to which you will probably be called, until yoo and they shall stand together at the same awful bar; they have a right to demand that you bring to the decision of their cause, minds free from every bias and prejudice. They have a right to demand, that they shall be presumed to be innocent, until their guilt is made manifest. They have a right to ask, what in the distinguished wisdom and humanity of this high and enlightened court, I have no doubt they will receive;

justice, administered with the most scrupulous caution, and regard for life.

Gentlemen—the prisoners are each and all of them, indicted for killing, piratically, feloniously, wilfully, and of malice aforethought, one Thomas Baynard. This, notwithstanding the wide range which the evidence has taken, is the precise and only charge which you are to try. And again, I implore you, if any impressions of other charges and crimes against them, be entertained by you, to watch with the most jealous care, that they do not mingle or interfere, with the discharge of your present duties.

It is unnecessary now, to my purpose, gentlemen, to dwell on the legal definition of malice; or the different species and degrees of it, necessary to constitute the crime of murder.

The English law of piracy, making principals and accessaries liable in the same form, and to the same penalties; or in other words, making accessaries, principals;* is, if ever in force here, superseded by our own statute on that subject;† and it is therefore, in sustaining the charge, incumbent on the government to satisfy you, beyond all reasonable doubt, not only of the death of Baynard, and that he came to his death by the violence stated in the indictment; but also that the prisoners, each and all of them, committed this violence, wilfully and of malice aforethought; or were present with the unlawful intention of aiding and abetting, or did actually aid and abet, in the commission of it. It is said in the books, "they must be aiding, assisting, and abetting; *mere presence is not enough.* A participation also in the felonious design, is necessary." "If one be present, and not aiding or abetting to the felony, he is not principal or accessary." "If A and B be fighting, and C is a looker on, and assists neither, he is not guilty of murder or homicide, but it is a misprison, for which he shall be fined, unless he useth means to apprehend the felon."‡ These principles, gentlemen, however familiar to lawyers, it is not unnecessary to repeat, as upon them, may depend, in a degree at least, your verdict on this occasion

Such then being the charge, and the manner in which, as we apprehend, the government are bound to support it; we say in the first place, that even if the testimony on the part of the prosecution, was drawn from the most fair and unpolluted sources; if the witnesses were superior to all exception, and admitting that they swear what they believe to be true; they have not established the fact of the killing, beyond all reasonable doubt; and in a case, consisting as we shall presently attempt to show you, principally of presumptive evidence, in fact, if not in form; we contend that the government are bound to put the death of Baynard, beyond all doubt or question. They shall not be permitted to make presumptions, except *on a fact already known and ascertained.* They shall not raise one presumption upon another, through their whole chain of reasoning, when the existence of the fact on which they ground them all, *is itself* but a probability and a presumption. "I would

* 11 & 12, Wm. 3d. 8 Geo. 1st.
† 1790.
‡ Chitty 1. 258, Mac Nally, 363. Gilbert Ev. 827. Hale 1. 438, 439, 442, 444. Royce's case.

never, says lord HALE, convict any person of murder or manslaughter. unless the fact were proved to be done, or at *least the body found dead.*"* "The wisdom and goodness of our law, appears in nothing more remarkably, says lord COWPER; than in the perspicuity, certainty, and clearness, of the evidence it requires, to fix a crime upon any man; evidence so clear and convincing, that every man the instant he hears it, must be fully satisfied of the truth and certainty of it."† Now the only direct evidence of the death of Baynard is, that Samberson says he saw two men, whom he considered to be Williams and Rog. take up Baynard, and throw him alive into the sea. In Hindmarsh's case,‡ where the indictment was in the same terms with this; and the charge the same, and the evidence was, that the prisoner threw the captain into the sea; Garrow objected, that it was not proved the captain was dead; he cited HALE 2, 290; and mentioned a case before Mr. Justice Gould, in which two persons were seen to throw a child into the dock at Liverpool, and on trial were acquitted, although the body of the infant was not afterwards seen, because the tide might have carried out the living infant. *The Judges admitted the rule of law, as stated by Garrow;* but as near the place where the captain was seen, a billet of wood was found, and the deck and part of the prisoner's dress was stained with blood; *Ashurst* left it to the jury to say, whether the deceased was not killed, before the body was cast into the sea; on which ground *only*, a conviction took place. There was no billet of wood found here, gentlemen, and no blood on the prisoner's dress. If then it is said, that Baynard was dead, when cast into the sea; the answer is, that there is no proof of that fact, but that on the contrary, his voice was heard; and that if it were so, the throwing him over could not be murder. If it is admitted, as the evidence is, that he was living, when cast from the vessel, there is then on the authority of this case, no sufficient proof that he was killed, as stated in the indictment. We leave to the gentleman, the choice of the alternative. There are many instances recorded of persons, supposed to be dead, on stronger evidence than this, afterwards found alive,§ and there is in this case no positive proof, that there was not, in fact, a sail passing, as was declared by the men on the forecastle. Not to dwell longer, however, on this subject; the fact of Baynard's being thrown over, is by no means certain, even if you suppose Samberson testifies what he believes; for from his situation, it is almost impossible that he could testify with certainty. He was called up at midnight—affrighted—to a scene of confusion. He was seized with violence, if you believe him; it was dark—stormy;—add to this, the extreme improbability that they should drag him on deck, without any conceivable motive, just in time to witness the violence upon Baynard; and you will, I think, not confide in the certainty of his testimony, as to the throwing the body over, or if done, as to the persons who did it. You will judge, whether the evidence of such a witness testifying to such

* Phillips, 17, 37. Hale, 2, 290. Chitty, 563.
† Bps. of Rochester's trial.
‡ Leach. 2d, 650.
§ Hale 2d, P. C. 290, Phillipps' Supp.

facts—at such a time, must not necessarily be unsatisfactory. It applies also solely to Williams and Rog; no others are in any shape implicated by the testimony, in the death of Baynard. White, in particular, it is testified by Onion, was not seen or heard of by him, during the night. I beg you to bear this fact in mind, gentlemen; you have the same certainty of it, as of any other part of Onion's testimony, and I shall hereafter recur to it. Here I may remark to you, that inasmuch as the prisoners were entitled each of them to a separate trial, although they did not see fit to elect it; so you are bound to consider their cases as distinct and separate, and apply the evidence with scrupulous accuracy to each. If you should think any of them guilty, and not be able with the most unerring certainty, to determine which, you are bound to acquit them all.* Onion says, Frederick, Rog, Raineaux, and Williams, were the only men on deck. Stromer, Smith, Rog, Williams, and Daniel Went, were the only men whom Samberson saw there. There was no man there of these prisoners, according to my minutes of the evidence, known at that time to be on deck, who did not belong to the watch then just commencing, excepting Rog; and his presence may be accounted for by the fact, that the watch had been just before changed; and it was not surprising that he had not gone below. They were there then for a lawful purpose. All but one, were obliged to be there. You are not to seek for an unlawful purpose, when a lawful one is proved to exist; and as I have before read to you, unless they were present with the felonious intent, or actually committed, or aided and abetted in the commission of the felony, they cannot be found guilty under this indictment.

But conversations are stated, which it is attempted to make into something like confessions. If the statements of them are to be taken together, they carry their own refutation in their absurdity. But are they proved to have taken place at all, in the manner in which they are related? Can it be possible, for instance, that Onion, during that night; in such a scene, as he would have you believe it was; in the confusion on deck, or in the confinement of the bread room; trembling for his life; convulsed with terror; should be able to identify, with certainty, persons or voices? But confessions themselves, by the rules of the civil law, must be made at the time of the trial, and in the presence of the judge; nor can they be proved by the testimony of witnesses.† By the common law, even when formally made, they are received with great reluctance, and persons have frequently retracted them, and been thereafter acquitted; nor can the confession of one be used against another.§ "But hasty confessions, made to persons having no authority to examine, are the weakest and most suspicious of all evidence. Proof may be too easily procured, words are often misreported, and they are extremely liable to misconstruction."‡ They are sometimes made in a state of inebriety, when the court will not receive

* Chitty, 258, 260. Hale I. P. C. 442, 443.
† Preamble to Stat. Henry 8th. Domat book 4th, tit. 4th, sec. 9th.
§ Burns, 1, 680.
‡ Foster C. R. 243, 200, 240. McNally 358. Chitty 570. Phillips 81, Kelyng 18.

them.* How much less, then, mere *conversations* in such a state, when the voices perhaps were not accurately distinguished—words not remembered—manner of saying them not regarded. Why also is the confession of the *prisoners* alone recollected? But supposing them, as related, may they not be accounted for, without imputing guilt to the prisoners? It is not to be presumed, that of a whole crew, consisting of fourteen, all were engaged in the transaction. There were nine other men. Stromer, of whom we have heard so much, and acknowledged by the witnesses to be a leader, was one. *Onion was one.* Smith, who had quarrelled with the captain and mate, was one. Raineaux was one; and admitting, for a moment, and for the purposes of this argument, what we certainly do not admit for any other purpose, that transactions, like those related, took place, these men, whom I have just named, some or all of them, were most guilty. Might not the prisoners have been compelled, by the threats of Stromer and his companions, not to interfere with them; and when the affair was over, and they found themselves completely in his power; might they not, from fear, and to remove suspicion; have been willing to speak, as if they had an agency in the transaction, in which in fact they took no part? But would not even that agency in it, for the sake of saving their lives, which would be *excusable in treason*, have been justified here?† Lord Hale indeed says, that although physical force will excuse, moral will not; because an immediate appeal is open to the laws for security. But to what laws can there be an appeal on the ocean, where a man must either sacrifice his own life, or take another's? The fear of death has a mighty and mysterious power over the mind of man. It has sometimes compelled him falsely to accuse others, and sometimss to confess himself guilty of crimes, which he never committed. The fear of death places those witnesses on that stand this day. Might it not have induced the prisoners to express themselves as they are represented to have done; or even if their participation was more active, would not this consideration take away all imputation of malice from their deeds? Taking then the government's witnesses to be such as have a right to stand in a court of justice, and be listened to with patience; whether you consider the fact of Baynard's death; the little reliance to be placed on Samberson and Onion, testifying to such facts, under such circumstances—that as to Frederick and Peterson, the evidence but slightly applies, such as it is, and to *White, not at all*—the entire insufficiency of the evidence of such conversations—remarks made, if at all, probably in a state of intoxication—or the (at least possible case,) that the remarks were made, or even the acts done, in a moment of terror, and impending violence; we say, that the government have only given you a case, and that not a strong one, of presumptive evidence; and on the danger of taking away men's lives on such evidence, I will read to you some authorities. *Hale P. C. 2d*, 289; *McNally* 1; *Phillips* 17, 22,

* Vaughn's case. 5 St. Tri. Salk. 634.
† East's P. C. 1, 70, 294. Mrs. Rudd's case. Cowper, 336.

43, 51, 58, 76, 86; *Chitty* 563. Here are cases of stronger presumptive proof, than are furnished in this instance and innocent men (proved innocent too late!) have been condemned and executed upon them. "Circumstances, it is said, cannot lie;" but "the men who relate them can." The best at any rate, may be mistaken; and when the evidence forms a case merely circumstantial, it is therefore to be received with the utmost caution. Nor is it enough for the gentleman to say, that the evidence is *the best* the nature of the case admits. It is not merely *the best*, but *sufficient* evidence, which the jury will require. Now it is not necessary for us to show you, that the prisoners could not have committed this offence. It is enough if we satisfy you, that it is not proved that they did. Doubt must be acquittal, and you must doubt, on this evidence, the killing; you must doubt, (from the impossibility of their testifying in that situation with certainty) the statement, as to who were active in the affair; you must reject the evidence of the conversations, and you must seriously doubt, if the prisoners acted at all, that they acted voluntarily. So far, had you learned the story from credible witnesses, it would have been, even then, insufficient to support the indictment. But we deny the least credit to the mate or Samberson. We say they are scarcely competent, much less credible in a court of justice. We say, that in their character of accomplices, their uncorroborated testimony is not to be believed. It may be worth while, for a moment, to inquire into the origin of this practice, of admitting accomplices to testify at all; of so far deviating from the rule of law, which forbids persons, in the least interested, to give evidence, as to admit those, who must necessarily speak under the strongest. It arose from the ancient practice of *approvement*. "A person desiring to be an *approver*, must be one, *indicted* of the offence, and in *custody* on that indictment. He must upon oath discover, not only the particular offence for which he is indicted, but all felonies, which he knows of. If it appears," after all, "that he is a principal, the court may then reject him; and the law is so nice, that if he *vary* in a *single circumstance*, if he fail in the *color* of a *horse*, or in circumstances of time, he is condemned to be hanged." "It is requisite, that *every word* said, should be found true, without any falsehoods; for the moment the court perceive, that he has falsified *in any one word*, they will give judgment that he be hanged; as appears often has been done."—*Cowper*, 335; *Ins.* v. 3d. 129; *Staunford*, P. C. lib. 2, cap. 56; *Bract. B.* 3d, cap. 34; *Fitz. Coron.* p. 441. And, gentlemen, testifying thus in *vinculis*; under these restraints and terrors; thus bound to the most scrupulous accuracy, by their own impending punishment, if they deviated in the smallest particular; there might be reasons for giving approvers some degree of credit, which do not exist in the case of accomplices. They indeed, feel bound to make out a case for the prosecutor; but they dread no punishment, although they perjure themselves, with regard to the accused. It is not without reason, then, that one general principle, strongly expressed, is found in almost all the authorities; that the uncorroborated testimony of

an accomplice, is not to be believed.—*Cowper*, 366; *Chitty*, 605; *Phillips*, 28; *Gilbert*, *Ev.* 293; *Hale*, *P. C.* 1st, 305; *Crown Cir. Com.* 138. Formerly, indeed, it was doubted, whether his uncorroborated testimony could be at all received.—*Hawkins*, *P. C.* 2d, 604, &c. But without detaining you, to hear all the passages in the books on this subject, there is one, whose authority the learned gentleman will not, I am sure, call in question. I read it, because it expresses with much more elegance and force than I can aspire to, the objections to this species of evidence, which I wish to urge upon you; and I read it the more readily, because the ardent and successful exertions of the gentleman on that occasion; by which one human being was saved from an ignominious grave; are. I doubt not, among the most proud and precious recollections of his life. It is taken from the speech of *George Blake*, Esq. counsel for the prisoner, in the case of the Commonwealth vs. Hardy:—"But, gentlemen, I cannot suffer this woman any longer to repose on the presumption of innocence. I will, therefore, proceed to the third, and what I deem to be the most *impregnable* ground of objection against her testimony; which is, that if not a principal and alone, she was at least accessary to the murder." After observing, that according to the ancient law, as he understood it, witnesses in this situation were not admitted until confession, and actual promise of pardon; he states one reason thereof to be, that a witness "is strongly interested in the conviction of his associate; for though the conviction of his companion in guilt, be no expiation of his own offence, yet a witness is thus *exterminated*, and thereby the chance of his own detection is diminished. Another reason is, that a confederate, who swears against his associate, and still protests his own innocence, has failed to communicate *the whole truth*, which he is pledged to do, by the tenor of his oath. Being thus guilty of a wilful perjury as to one point, the entire mass of his testimony is contaminated, and a jury are bound to reject it, as unfit for use in the cause. Another reason is, that a man is incompetent to testify with fairness and purity concerning the guilt of another, whilst his own bosom is laboring with a consciousness, that he himself was also guilty of the crime. He cannot, therefore, be viewed as an honest, upright, independent witness, until, to speak in figurative language, his *league with the devil be dissolved by penitence and confession*." So far Mr. Blake, gentlemen, and the figure with which he concludes, expresses with great force, *our* opinion of the situation of the government's witnesses, on this occasion. If then, it be urged, that the witnesses have not *confessed* themselves guilty, we say, there can be no stronger objection to them, than that their *actions show*, what their *words deny*. Those who have the hardihood to commit murder, or *even to conceal it*, have no compunctions in falsely throwing the crime on others. They wish to destroy former associates, for if they escape conviction, they fear their vengeance. This, they pretend, prevented their disclosure at first: surely it must now lead them to say enough to secure themselves, by putting the prisoners to death.

A witness, convicted of certain crimes, is not allowed to testify. *Brac.* 6, 4 *ca* 19 ; *Gilb.* 256. But, gentlemen, it is the probity of a witness which we regard—his sense of shame—his moral sense—his regard for his fellow men—for society—his belief of responsibility for his acts in a future life. Hence, no infidel can testify. *Omichund* vs. *Barker*, *Atkyns* 1. Hence no man, alleging or discovering his own turpitude, according to *Lord Coke*, *Inst.* 4, 279. What is the difference, then, gentlemen, as to the credit of his testimony, between a man convicted of a crime, and one who, by his own confession, ought to be convicted ? It is not the conviction, it is the crime which incapacitates. They indeed, tell you, that they acted under constraint ; but if the prisoners could go upon the stand, they might tell a very different story.

If a person have a promise of pardon, says Lord Hale, this disables his testimony, *Hale's P. C. 2d.* 280. Why is it so, gentlemen ? Because, that promise may operate on his mind, as an inducement to swear falsely. Now what is the difference, as to the operation on the mind, between the certainty of a pardon, which these men have, *(if they make out their accusation,)* and the promise of it ? Let me again suggest to you, the many instances of false testimony and false accusations to take life, recorded of accomplices. *Hume, Oate's testimony, &c.; Hutchinson. Rudd's case ; Cowper;* 336, &c.&c. Recollect too how easily in their representations of the pretended conversations, "the suppression of a word, of a syllable, of an emphasis, may change the sense. So words spoken in exclamation, conveying by sound and gesture, surprize and abhorrence, may be represented in evidence," as the confession of guilt.—From the nature of human passions and actions ; from the experience of all past time ; the authority of an uninterrupted series of legal decisions ; and the councils of wise men ; the uncorroborated testimony of accomplices, must be deemed altogether unworthy of credit. But perhaps it may be said, that their testimony is not uncorroborated. By the necessary corroboration of the testimony of accomplices, I understand proofs of circumstances, necessarily connected with, and making part of, the transaction charged as criminal. I do not understand it to be sufficient, to bring evidence as to facts of public notoriety, which all must agree in, because every body knew. It must establish some essential and substantive part of the specific crime charged; some fact, which could not exist, consistently with the prisoners' innocence. That there is such a place, as Baltimore ; that it is a commercial one ; that there was such a vessel as the Plattsburgh ; that she sailed on a voyage in 1816,—these are not facts, which are to satisfy you, that the five men at the bar, murdered wilfully and maliciously, one Thomas Baynard. This is not the corroboration, which the weakness of the witnesses testimony requires. They are not to be believed, gentlemen, swearing to *their own infamy*—in *their own cause*—for *their own lives*—concerning transactions, which took place, if at all, on the ocean ; when no other human being is present to confront them, who was on board that vessel, except the prisoners, whose mouths are shut ; and who, if it were not so, might

most completely contradict their story. But are there not other objections to them, besides the conclusive one of the character of accomplices, in which they appear. Consider their story, and their conduct. In some particulars they contradict each other; and in others, state what is exceedingly improbable, if not impossible, to have been true with respect to themselves. It is a rule of law by which you are bound, that if you believe a witness has sworn falsely in any one point, you must reject the whole.—*Coke. Inst.* 4. 279. If you do not know which to believe, you must believe neither. Onion says he did not serve as second mate after the transaction. Samberson swears he did. Onion said without qualification on the stand, although an attempt has been made to explain the contradiction this morning, that he took the name of Yeiser. Samberson says, Williams took it. Onion says, he took the money reluctantly. Samberson, that he took it without reluctance. Do you believe that part of the black man's story, in which he says, that he was dragged, and compelled to come on deck. just in time to witness the casting of the body of Baynard into the sea; and fearful, and suspicious of him, as he says they were, and in his station. do you believe they made him the confidant of their secrets? Do you believe his anxiety, to disclose in Norway, when he made no attempt in Copenhagen? While he is watched, he tries to disclose; when he is at liberty, he forgets it. He is an uninstructed man, of the lowest class in society; ignorant probably in a degree of the nature of an oath; swearing, as he understands, for his life; a story which he had ample time to agree upon with the mate. Is not the mate's evidence to be rejected, gentlemen? He comes into the court, in the first place, to take one oath, according to his own confession, to violate another. He comes, to call his God to witness, that he has already, in the same solemn manner, taken his name in vain. He was an officer on board that ship, gentlemen; bound, by the most imperious obligations, to good faith towards his superior officers and owners. What does he do, according to his own account? He deserts his captain in the moment of his peril—he leagues with his murderers; shares in the plunder, even of his captain's cloathing—associates with them; enters into speculations with them—preserves a profound silence, as to the crime; does not write even to his friends; and confesses only, when he hopes to save his own life, by betraying his fellows. If innocent, as he swears, why not reveal it? Such is his conduct. Take his story. He at first, in this scene of blood, receives a slight blow on his head, which he thought the flapping of a sail; so gently did these ruffians proceed. Murder is generally made of "sterner stuff." He is next seized by them, but no harm ensues. A blow of an axe is aimed at his head, but by another miracle, it does him none, or but slight injury.

On finding his captain in danger, he promptly and dutifully runs away; waits patiently below, until all those who might have assisted him, and whom he might have assisted, are no more, and then joins in the plunder; and yet, he had *no participation in the crime!* Do you or can you think *all this is true*, gentlemen? If

his conduct was what he swears it was, he is unworthy of credit in any thing else. If his story is untrue in *any part of it*, you are bound to reject the whole. It is not possible, gentlemen, that on such testimony, thus polluted; thus discredited in its very character—thus absurd and inconsistent in its statements; you can consent to take the lives of five human beings. But such, and contaminated as it is, gentlemen, it does not, from beginning to end, implicate White. His absence indeed from the scene, when, had he been present, even Onion says he must have seen him, unless he was hid; his lamenting constantly the transaction, and disclaiming any part in it, (for if you admit the mate's testimony as to the others, you must as to White,) all prove his innocence. Even were it true, as the black man pretends to state; that he was on deck after the transaction, and appearing to join them; it is accounted for by the certainty, that if such acts were done, his opposing himself to others, thus possessed with power, would have cost him his life. If then you discredit the testimony, and history, experience, law, and justice, show you the danger of confiding in it, you must acquit all the prisoners. If you believe it, you must at least exonerate White. The subject, gentlemen, is not exhausted; but I am unwilling, in this very protracted trial, longer to detain you; and the gentleman who will succeed me, will more than supply all my deficiencies. Permit me briefly to recapitulate a few of the suggestions which I have made. We say, that under this indictment, the prisoners must be proved to you, each and all of them, to have committed the murder, or to have been present, aiding, assisting, and abetting in its commission. That the fact of the killing is not established. That if it be admitted to be probable, men's lives are not to be taken away on probabilities. That there is no direct evidence which can be relied on, even if the witnesses are thought honest, that Williams and Rog had any share in the transaction; and none at all, as to the others; that conversations stated, are not confessions; and if they were, would not, in these circumstances, be evidence; and if they were both, might be accounted for by the supposition of compulsion and terror, which would take away the character of malice and crime, even from violence, if it had been proved to have been committed; that it is all presumptive evidence, and too weak to produce conviction, even if the witnesses were credible; that they are not credible, because they were accomplices, and are not credible, from their own conduct, as they relate it, and the inconsistencies of their own story.

Gentlemen, to your hands is the fate of the prisoners consigned. It is not my intention to address myself to your feelings, on an occasion, which must itself excite them, more powerfully than language. "Presumptions should be very warily pressed," for said Lord Hale, (in whose character, wisdom and humanity were most eminently and benignly illustrated,) "it is better that the guilty should escape, than that the innocent should suffer." If yielding to the doubts which every where surround this cause, and uninfluenced by the ability and eloquence, with which the council for the government will address you—you pronounce a

verdict of acquittal; and the innocence of the prisoners, should hereafter be made manifest; the recollection of it, will be to you forever, consolation and peace. If even, on the other hand, this deed of darkness has been perpetrated; and the prisoners should ever be proved, all or any of them to have criminally shared in it; you need not, even then, regret your acquittal; you will not even then fear, that its "DEEP DAMNATION" will go unpunished; or that HE who hath said, VENGEANCE IS MINE, will not amply REPAY.—Gentlemen, I have only to pray for the prisoners, "a good deliverance;" and for yourselves, that ALMIGHTY GOD, may direct, and approve your verdict.

Mr. HOOPER was succeeded by Mr. KNAPP, who thus addressed the jury in behalf of the prisoners:—

May it please your Honors,
Gentlemen of the Jury,

It is always an unpleasant task to defend those charged with murder, or other high offences. The counsel for the prisoners never stand an equal ground with the officers for government. The current of public sentiment is generally with the latter, while the advocate for the prisoner struggles against power and opinion. It is a legal, not a moral truth, that a man is supposed to be innocent until he is proved to be guilty. Public opinion frequently forestalls the verdict of a jury. It is in vain to say that any man is above it. It may influence him when he is not aware of it. If the labors of counsel were ever hard, ours is so this day. The great commercial interests of our country, are so closely interwoven with national prosperity and glory, that they must be guarded at every point. Individual human life is nothing to the security of maritime rights, privileges and facilities; and every one who disturbs the regularity, prosperity and safety of navigation, is justly treated with the utmost rigor. The severity of laws is seldom to be complained of. They are commonly just, and made for wise purposes It is the severity of public opinion that the prisoners have to fear; but this severity of feeling should never enter a tribunal of justice; there the whispers of reproach should die; and there prejudices and partialities should cease; for every man should be tried by the law, and the evidence in his case. It is impossible I know, not to catch something of the general sympathy which surrounds us in favor or against the prisoners, but this feeling is a fallacious guide, and will never be followed by an upright and an honest jury. What must be the feelings of counsel, when they know that every eye flashes indignation on the prisoners at the bar, and every breath is but a suppressed imprecation on their heads? Should the prisoners be abandoned because the public mind is agitated, and the people ask for their condemnation. The timid and the time-serving, may yield to policy or to fears in such a case; but gentlemen, it is our duty and yours to go on and search, and weigh every thing

which will make in their favor, even if public resentment should shake this hall of justice to its base, and attempt to pull down the edifice on our heads. Humanity dictates; the law allows, and this enlightened, pure and high minded court will protest us, and indulge a fair course of discussion, and even demand of us a thorough and patient investigation in this case Freedom acknowledges, and honor sanctions the principle, that every human being, however wretched and fallen and lost, should find some one to plead in his favor. The world is full of examples to this effect, and the page of inspiration bears record that the father of the faithful, twice, thrice, *yea*, six times importuned his God to spare the accursed cities of Sodom and Gomorrah, and the Most High was not offended. The pleadings of *dust and ashes* so far gained on the clemency of Eternal Justice, that he diminished the number of the righteous, for whose sake he would spare the wicked, from fifty to ten. If it be the duty of holy men to implore mercy of Heaven for the vilest of sinners, surely the appointed advocate in a court of justice has no reason to shrink from demanding righteous judgment from a human tribunal. However general the burst of public indignation may be against the supposed perpetrators of crimes on the high seas, I will not believe that the magnanimous citizens of my country could wish to see them destitute of assistance. No, they would rather help in their defence; for indignation among the moral and virtuous, is but a momentary feeling, while the love of impartial justice is a permanent principle.

Three out of five of the prisoners are foreigners, strangers to our laws, our forms, and, what is more, strangers to our humane feelings. They are, of course, jealous of every thing. They look, and there is no friend near, no eye to pity, and no arm able of itself to save. Their communication is cut off from their fellow men, and the only kindness they have felt of late, has been from the ministers of justice, and the only friendly salutation which has reached their ears, has come officially from the Clerk, "God send you a good deliverance." They have so long been in bondage, that the earth under their feet seems to them accursed, and the Heavens over their heads are dark and cheerless, save only the vista which, through contrition and penitence, religion opens up to the forgiveness of their Maker. From the very nature of the charge, they have no witnesses; no one who knew them in better days and in other circumstances, when probably their chief crime was profussion of generosity, and their highest offence was a total disregard of self. Shrunk and blasted as they are by public abhorrence, they can confidently rely on your sense of justice. They have been so instructed by those who knew you.

On fair and enlightened decisions, in courts of justice, depend the safety, stability and dignity of government. If the judge is condemned when the guilty escape, he is doubly so when the innocent are convicted. The forms which wisdom and experience have settled and fixed, must be strictly guarded. A close adher-

ence to them is the great security of human life. If they are ever infringed by the plea of supposed necessity or public excitement, all personal security is uncertain. It sometimes happens that criminals escape by a rigid adherence to these rules; and for a moment it may be a subject of regret; but, on sober reflection, the wise and judicious would more certainly grieve at any infringement on their sanctity, than at the escape of an hundred criminals. One of these substantial rules is, that the prisoner should meet his accuser face to face, and that nothing of hearsay should be considered as evidence against him. Another, that the accuser's character should lie open to the investigation of the prisoner, that the jury might know what weight to give his testimony. The witness must be under oath; but you are to consider how far this may be thought to bind him to tell the truth. His character, his story, his inducements to falsify, are all subjects for your discussion and decision. Who are allowed to take this oath and stand before you as a witness, is for the Court to decide; but how far the witness is to be believed, after he is sworn, is for you to judge. But in this, neither the court or jury are left without guides. The sages of the law have from time to time fixed wise rules, which are now considered binding as far as they go. Permit me to comment for a moment on a few of these rules, which are applicable to the case of the prisoners at the bar. As on the purity of a witness and the truth of his testimony, depend our lives, property and liberty, it is necessary cautiously to scrutinize all oral evidence, that we may get at the truth. It is painful to think how much error there is after the utmost caution. Fallibility is stamped on every thing human, when men are enlightened and governed by the purest motives, and the best affections; but to what an extravagant height it is carried, when they are weak, ignorant, passionate, revengeful and false. From honest ignorance, much error is to be feared, for the ignorant cannot discriminate accurately; they confuse by mingling facts, opinions and wishes together, and although their statements seem full of honest candor, yet in truth, they are frequently full of error. The weak draw improper conclusions from misunderstanding the subject; and folly has almost always a dash of malignity in it; and malice easily overpowers an imbecile mind. Enthusiastic and passionate people infuse much of their feelings and wishes into what they say, and the solemnity of an oath is forgotten in the fervid current of their emotions. It would indeed be painful to look back through the history of those who have suffered by the false and the revengeful. I believe there is as little false swearing in our courts, as in any in the world, but let the believer in the purity of human nature, the optimist who thinks the best of every thing, be an observer even of our courts, and he will hear so much false testimony from ignorance, passion, partiality, interest and hatred, that would soon destroy his theories of perfectability, dash his systems of purity into dust, and leave him in doubt, if it did not force him

into the belief of total depravity. Much of this evil happens when men come forth as witnesses without any apparent cause for deviating from the truth. At all times the jury are bound to sift evidence with the most scrupulous care; but all the might of their understandings, and all the honesty of their souls, should be summoned up to analyze and examine testimony which comes in a questionable shape and carries doubt on the face of it, particularly such as you have heard this day from the mouths of accomplices, such, by their own confession. The testimony of a confessed partner in guilt should ever be suspected. Selfishness has no moral purity. If the developements of an accomplice could flow from contrition and penitence, then they might create some confidence, but not full confidence then, for he might judge of the motives of others by his own before he felt any compunctions. But when such developements come, as they generally do, from the low and base wish and expectation of screening one's self from punishment, they contain the villainy of crime and the moral degradation of perfidy. The communicative wretch can never forgive the man he has ruined by divulging their mutual turpitude. To the correct statement, he adds the suggestions which his own perfidy deems necessary for his personal security. The ancient law of approvement, in some respects, was excellent; to hold the approver to the nice and entire proof of his statements, or make him suffer the punishment, which, if he had been believed, would have been inflicted on those he bore witness against. Modern policy has altered the rule, but has not changed the reason for doubting the testimony of an accomplice. The moral infamy is as great in a confessed accomplice as if he were convicted. If he were convicted, his testimony could not be received, because he would be legally infamous. You and I believe a man to be no less a rogue before he is convicted, than after, if he is guilty of a crime. For reasons of policy there is a distinction, but in morals there is no difference. The framers of this rule of distinction were fearful of going too far, and more than hinted again and again that the testimony of an accomplice must be supported by other corroborating evidence before a jury would convict a prisoner. The legal guardians decided on the competency of an accomplice with great deliberation, but never admitted him as a matter of course. The counsel for government must move the court that he be admitted. His guilt makes him unworthy the stand, without special leave of court. The accomplice then comes before you stained with guilt, admitted from state necessity, to tell a tale of villainy in which he was an actor; and this to shield himself from punishment; not from ignominy; for every one looks on him as a felon spared, not from clemency, but necessity. The credit due such a witness, is trifling indeed, when on his testimony hangs the fate of others as good at least as himself. That excellent luminary of the law, Sir Mathew Hale, who was good and wise above most other men, has left this memorable

sentence on record, speaking of the testimony of an accomplice; "and truly it would be hard to take away the life of any person upon such a witness, that swears to save his own, unless there be also very considerable circumstances which may give the greater credit to what he swears." *Hale. pl. cr.* 305.

Another part of the evidence against the prisoners at the bar, is a statement by one of the accomplices, of certain confessions made by the prisoners or some of them, in hearing of the witness. On this, probably much stress will be laid, as affording proof, not only of the share of guilt they had in the transaction, but as shewing that they have hearts devoid of social duty, and fatally bent on mischief. These confessions, I think you will see, do not amount to much, when you have thoroughly examined them. Confessions are inadmissible evidence when obtained by promises or threats, be they ever so slight. It is deemed unfair to question a prisoner when under the influence of agitation and fear. The mind, under such circumstances, is confused, and answers are returned to questions, without thought or accurate recollection. Although the authorities seem not to speak out fully, yet they all favor the principle, that confessions to be worth any thing as evidence, must flow from some contrition; or the terms free and voluntary, are nugatory: for no man would make a free and voluntary confession, except from hope, fear, or compunction of conscience. If what have been called confessions, were made as have been stated, they were made under the influence of intoxicatiou, and as in Vaughan's case, must be considered as a nullity. Men are answerable for their deeds when drunk, but not for their words. If any such conversation ever took place, as the witness has stated, the whole crew were in high excitement, and over their grog attempting to out-swagger each other. You will not say, even if something of this sort of boasting did occur, that men shall answer with their lives for such silly and false bravadoes. If confessions sworn to by honest men and unexceptionable as witnesses, are not of much weight in the scale of evidence, how little attention should be paid to them when narrated by an accomplice. These multiplied uncertainties make what is extremely doubtful, which is nothing as evidence. Open mouthed credulity would hardly swallow such a tale from such a man; and common sense would spurn at it without hesitation. There is another rule and a sound one, that all confessions, whatever degree of credit be attached to them, must be considered individually and not generally. A cannot confess for B, nor he for another; nor can a part of one man's confession be taken without the other part. If this were not so, out of our own mouths might we be condemned, almost any day of our lives. This whole string of confessions are, when examined, nothing but a tale of riot and merriment, "told by an ideot" and a knave, "full of sound and fury, signifying nothing."

We have, gentlemen, discussed the nature and testimony of the

witnesses; it may not be improper to say a word on the character of these men. Stephen Burnet Onion, who sailed from Baltimore as second mate of the schooner Plattsburgh, is the first. Take this man's story and learn his worth. After the transaction of the 22d of July, 1816, he states he assisted as second mate; like the Vicar of Bray, he was determined to hold his office, whoever was commander, and did, until she arrived at Norway. This might all have been explained and justified, if he had done his duty afterwards, when he was in a Christian country, and sure of protection. When the men who terrified him so sadly, and compelled him to do duty on board, had no power to harm him, but were entirely in his hands—did he go and divulge all the secrets he had to tell? No—he kept them, and the booty likewise, and entered into speculations with the prisoner, Williams, and purchased sugar and other articles for shipping. He had turned merchant on his robbery, and had great hopes of making a fortune, no doubt. Baynard, Hackett and Yeiser were only remembered by some precious articles he had of them in his possession. This man entered at first into Stromer's nefarious plans, or the plunder won his heart. A few thousands had sealed his lips, and his conscience rested quiet on a bag of silver. Immaculate creature! How magnanimous and just are your deeds! What unbounded confidence ought to be placed in your word! Gentlemen, he indeed borrowed the name of Yeiser, and went under his *protection*, but undoubtedly all this was for public good, that he might be brought forward this day against the prisoners! Can this man possibly forgive them he has so vilely injured by his falsehoods? Gentlemen, I am not quarrelling with nature nor her works; but I ask you just to turn your eyes on this witness's face, and tell me, is there one line of honesty or veracity to be found there? Will you put the lives of men in jeopardy on such testimony? Will you believe a wretch who had not sufficient bravery to defend himself or assist others? A man who had sneaked under a false name, and who meanly betrayed those he had assisted to seduce? Will you rest your verdict on the testimony of Stephen Burnet Onion, steeped, as he is, to the lips in guilt? The dastard has told his tale to save his life. He may live long, but conscience, like the vulture, will tear his breast, while he drags out the remnant of his days. If it were possible for him to escape the scorn of man, he never will escape from himself. Conscience will forever make a coward of him. What has been said of Onion will generally apply to the other witness, Edmund Samberson. He too, was an accomplice. He partook of the spoils, and betrayed his coadjutors in plunder. Will you believe his statements of what he saw and heard, when he was, from his own account, trembling with fear of corporeal harm? In the darkness and confusion, could he make accurate observations on what was doing? It is too much to be believed, gentlemen. His story is composed of after thoughts, suggestions, and conjectures, and has been so often related by him, that he appears to have the confidence of a man of truth.

I will now consider the facts as stated by the witnesses. The

indictment alleges the death of Thomas Baynard by drowning.—The first question, for you to decide is, Has the death of Thomas Baynard happened? One of the witnesses swears, that he saw him thrown overboard, and afterwards heard his cries in the water, and that he never saw nor heard of him any more. I grant, gentlemen, that for all common purposes, to all civil interests, and rights, and to every common intent, his death may safely be inferred; but gentlemen, no room should be left for inference in this case. The death must be shown to have happened, to an absolute certainty. This must be established before the prisoners can be charged with the crime of murder. The death on a charge of murder is not to be proved like most other facts. by a preponderating balance of probabilities, but the testimony must be direct, positive. full and satisfactory, not leaving the shadow of a doubt on the mind The case as stated by the judge who tried Hindmarsh, mentioned by my associate, is, that a child was thrown into the dock, where the water flowed in and out, and nothing was known of the child afterwards. On this the jury were directed, that the possibility of the child's being alive took away the absolute certainty of its being dead, and the indictment could not be supported. Now is there more probability in the case as stated in this trial, than in the present case? Is it not as probable that Thomas Baynard is now alive as that the child was not drowned? Both are highly improbable, I agree; but the law says, that it is right and just rather to reason from improbabilities, than to admit uncertainties in such a case. The difference between a certainty to a common intent, and a certainty to an absolute intent, is greater than we commonly imagine. If a man goes out to sea in a small boat, and a storm arises, and afterwards the boat is found upset, it is fair and just, to all common purposes and intents, to infer that he has perished, but still he might not be dead; such instances have occurred in our time, and the supposed deceased was afterwards found to be alive. Would you not say, gentlemen, that a man who was seen going over the falls of Niagara in a skiff, and never heard of more, was dead? Yet men have gone over the falls safe, and it would not be impossible that he might be alive whom we thought was lost.

When Daniel was cast into the lion's den, it might have been fairly inferred that he was instantly destroyed, but still that inference would have been false, for he was not killed. The angel of the Lord shut the mouths of the famished lions. Does not that same angel walk on the waters to rescue his charge from the deep? It was indeed a special providence, but that special providence which all acknowledge, but which no one can define, is constantly operating on all the incidents of life.

If Baynard should at this time come into this court, it would surprise us; but stranger things than that have happened. In this case you have no right to conjecture or reason upon his being dead. The only question is, has his death been proved to a demonstration? If not, then your inquiries will end here, even if you believe the witnesses.

But if Baynard be dead, who killed him? Samberson says, that Williams and Rog threw him into the sea. But allowing him for a moment to be a fair witness, how could he tell precisely who did the deed. It was a dark night. No moon rose to throw her silver mantle on the waves, and no star was seen in the Heavens that night; all was as dark as death. It was impossible for Samberson to tell who threw Baynard into the sea. He could not have told who did it, even if he had been perfectly collected and within a few feet of them. But was he not, from his own account, nearly frightened out of his senses? How, in the name of truth, I ask, could this witness be so positive in such a scene of confusion and dismay? When, if it had been open day, the hardiest nerves of innocence would have trembled, and the brightest eye of bravery have closed at such a sight. Were Peterson and Frederick there at that time? He does not say, for he could find nothing for them to do, and his tale must be told in such a manner as to bring home the murders severally to the men, who were taken, and get them convicted, that he might be entitled to freedom, for his services to the country. Where was the arch fiend Stromer and his hellish confederates, Smith, Stacey and Raineaux? Were they spectators of this horrid scene, so grateful to their infernal dispositions? Had they no hand "in this deep damnation of his taking off?" They are not here, and Samberson has no object in charging them. He fears that if he had stated what they did that night, some of these unhappy men might escape, and that would not suit his purpose. The demons of murder always reason on such a deed, that "If it were *done*, when 'tis done, then 'twere well it were done quickly;" and it is not probable, that Baynard was left stretched on the deck to die, but was, like the others, thrown instantly into the sea. Diabolical as they are represented to be, they could not have wished to hear his groans; for he had not injured them, and was lovely and amiable to all.

It is said, that Frederick had a gun in his hand, in the cabin, but this was some time after the confusion on deck, when Baynard was thrown overboard. If he had taken it as an offensive weapon, it would have been used on deck, to despatch the officers; but neither Onion nor Samberson saw him have it there. It must therefore have been seized in a moment of agitation for self defence. This may seem doubtful if you believe the witnesses. But let us for a moment consider how this whole business was probably managed. Stromer is represented to be a man of considerable acquirements, who had been commander of large vessels, broken down and degraded by his vices; and so reduced in his circumstances as to be under the necessity of shipping as a common sailor. He had associated and boarded with them in Baltimore, and knew how to pick his men for an enterprise of "pith and moment." Smith, Stacey, and Raineaux were well known to him; and I think it is more than probable that this plot was engendered before they left Baltimore. They soon saw the *material* of the crew, and knew to whom they might apply for aid and assistance. There are

always, among a number, some men who are but of trifling importance to the daring spirits in forming an enterprize. They are of too little consequence to be solicited to join a plot of magnitude, good or bad. Stromer had his secret council about him, and thought but little of such men as Frederick and Peterson, They might or might not be with him, he cared not a "pin's fee." His myrmidons were sufficient for taking off the officers; and all the small folks about the ship he was sure to awe to obedience in an instant after the legitimate officers of the vessel were gone. It was not necessary to divulge his secret arrangements, for such a man is sure of the adhesion of those who would have been base enough to have joined him, had they known his schemes. He is sure too of those who are operated upon by their fears solely, for they, poor fools, will always follow the most determined and resolute.—Frederick was an Italian sailor, and passenger, working his way to his native land, and was not on the shipping paper, nor did he consider himself as one of the crew. Peterson was a boy, and would have dared to have met a shark in the water as soon as he would have ventured to have given his opinion in a council upon the life of Onion. Peterson says he was ordered upon deck by Stromer, and he obeyed. It would be wanting in knowledge of human nature to doubt his story. He who would say, "why, Stromer was only your equal," you need not have regarded his order, he was a sailor as you are, does not know the power of mind, and particularly its influence in a moment of anarchy and confusion. The government on board the Plattsburgh was just as good the day following these horrible events as ever it was. This shows every thing had been arranged by a few only.

I will now call your attention to the evidence in the case of White. His own account of himself is, that he left the deck at twelve and did not quit his birth until between three and four in the morning; that he had no participation in what transpired, either in thought, word or deed; that he knew that the vessel was to be taken from the officers, and as he understood, they were to be put into a boat that they might reach St. Mary's. He feared to tell the officers, thinking that it would produce not only his own death, but the massacre of them. He joined them afterwards and assisted in working the vessel and shared the money with the crew to save himself. Let us look at Samberson's testimony. He says that he saw White on deck at the braces or some other part of the rigging, assisting to work the vessel, but he was profoundly still. The next time he saw him, was in the cabin council upon Onion's life, but he did not talk about Onion, but laughed and talked about other matters—he also heard him say that coffee was unnecessary, when Stromer ordered it, and that he took a glass of whiskey with Stromer; was cheerful, gay, and full of stories all the remainder of the voyage—but never heard him boast of any share in the transaction. This is the amount of his testimony; take this alone, it is nothing, but when taken in connection with facts, and circumstances which

have transpired, and with Onion's testimony, all suspicions of his having a share in the villany, are gone. Onion did not see White when he came out of the bread locker at the request of the council held upon his life ; and certainly if he had been there Onion must have seen him. If he had spoken any way for or against him, his ear could not have mistaken sounds at such a moment, when his life perhaps depended on a word. White was not there ; Samberson lies. White would not have dared to counteract an order of Stromer at such a time, and therefore never said any thing about the coffee. Stromer had his first meal in the cabin in perfect order, not one of his associates was there—his officers only sat at the table of this demon. Onion further says, that while the crew were handling the money, White whispered in his ear his horror at such a deed, and disavowed all participation in the business. If he had been one of the fellows of Stromer, would he have dared to make such confessions ? Could he have wished to make such a statement ? If Samberson is believed, the most of them on this *sabbath* of rapine and murder, when the money was divided, revelled with savage joy in the recollections of their atrocity. The statements of Onion are all in favor of White ; his demeanor, his confessions, in fact, every thing Onion saw or heard, was in favor of White. Samberson says that he was full of glee. This is the strongest circumstance that can be adduced in favor of his innocence ; for if he had been delighted in thinking that the vessel was taken, the very pleasure would have induced him to allude to it frequently. He would have been in great fellowship with the rest of the crew upon this exploit. He was gay, precisely as any one would be, whose sincerity in the business was doubted. Both witnesses say they were as cheerful as they could be, and made exertions to be pleasant ; and you, gentlemen, from your knowledge of mankind, will say, that it is natural for a man, under such circumstances, to put a forced smile upon his countenance. Many an aching heart has been hid under a smile, and jollity and mirth have been the necessary disguise of horror-struck minds. In days of revolution and bloodshed, this happens every hour.

In situations of personal danger, all classes of men have nearly the same feelings, varied more by their constitutions than by their information. The memory and invention of White, were quickened in detailing these stories to amuse the crew, for he saw that they turned their attention from him to his stories. The thousand and one Arabian tales, whose beauties have delighted children and philosophers for ages, were invented day by day, to soften the wrath and arrest the dagger of a despot. White's stories were of a different sort, and we ask no credit for their wit or delicacy. They were told to screen him from danger, and they answered his purpose ; and that is sufficient. What different conduct, gentlemen, could you have asked of a sailor ? His course was wise and prudent as to himself, and it did no harm to any one. His lamentations,

however loudly uttered, could not have called from the bosom of the deep, those who were said to have been cast there. A word of murmuring would have plunged him after them. Through the whole affair, he took just such a part as an ignorant, good hearted, honest, but sagacious man, would have done. He regarded that law, which is said to be the first in nature—self preservation. He was silent when complaining would have been useless; he acquiesced when opposition would have been death. If his blood is wanted to satisfy indiscriminate public vengeance, let it be shed; but if you wish to raise a monument of justice amid the convulsions and throes of the public, spare him; and your children and posterity, to the latest period, shall reverence the memory of men, who dared, at such a moment, to be just and discriminating. May the proud recollections of virtuous independence, be yours; and "that calm sunshine of the breast," which is a foretaste of a better world. This is an important moment of your lives; but judge ye upon such principles as you wish to be judged by, and you cannot do wrong.

> "———To thine own self be true;
> And it must follow, as the night the day,
> Thou can'st not then be false to any man."

The fate of a mere seaman is hard beyond that of any other class of men in the community. Their prospects are that of perpetual drudgery and privation. Their toils are endless, their hopes nothing. They are required to conform to the strictest regulations, without any moral instruction. Instead of living like other men, and *having line upon line and precept upon precept*, their only stimulus to do right are a few hearty curses for doing wrong. The examples before them are frequently none of the best. They endure much, enjoy but little, and anticipate less. Yet on this class of men much of our prospects, much of our dignity and glory, depend. Our naval fame and honor rest chiefly on this hardy race of citizens. Commanders may be found every where. Reputation makes officers brave and skilful, but sailors must be heroes, without the hope of individual distinction. Their only elevation rests on the reputation of all their kind. These men will be fostered with care by a nation who knows her true interests, and their follies and errors corrected with tenderness. Those we have adopted partake of the spirit of our true born sailors. The influence of liberty, like that of magnetism, is communicated to all it touches. They fight and bleed under the eagle of our republic, with a spirit that an imperial banner never inspired. They are held as a better class of men among us than in other countries; and this is the principal reason of their superiority. If you wish to break the talisman and dissolve the charm; if you wish to blast your naval glories, and sink in infamy your naval crown, hang and gibbet, at every corner, for the slightest offences, your bravest seamen; treat their errors as crimes, and hold their crimes as unpardonable; keep them from the common indulgencies in favor of human life, and hunt them down with unsparing vengeance, and you will easily effect your wishes. It requires but a short time to destroy the heroic spirit which it cost ages to rear. The protec-

tion of seamen is one of the safeguards of commerce. Wholesome restraint is a part of protection, but severity is not. Of the importance of our commercial relations, there is now but one opinion; all agree that no nation can be great and powerful and happy without commerce. Commerce is not only the golden chain which binds together the world, but it is also the golden mean to all noble ends; the patroness of agriculture and the arts. Our nation has felt its rapid and cheering influence. Two centuries have changed the skiff and the canoe, whose freight was mules and shrimps, to numerous fleets, laden with the wealth of the world, and tall navies, riding triumphant in victory. "Our merchants are princes, and our traffickers the honorable of the earth." They extend their influence not only to arts and agriculture, but to science and letters. They rival the proud munificence of the Medici, in lavishing their wealth on seminaries of learning and institutions of charity. But after every praise, it is the nature of our existence, and the fate of man, that every excellence has some concomitant evil, and every pursuit some bias or prejudice. That which arises from a crowded population and an extended trade, is a too great susceptibility of feeling on subjects, nearly or remotely connected with its interests. This not unfrequently misleads the judgment of the best of men. The larger the commercial city, the more inflammable is public feeling. A single rumor has agitated Venice in her most prosperous days; and a single stock jobbing story on the exchange of London has carried consternation, confusion and ruin to thousands. It is impossible for the wisest and firmest to resist a general impulse. These stories generally soon evaporate, but sometimes citizens are called to decide as jurymen, on subjects connected with the excitement before it has entirely passed away. Then comes the struggle. The great and fair mind divests itself of all impressions, and comes into the hall of judgment in the hallowed nakedness of truth. The feeble mind and dependent spirit catch opinions as they float on the breeze, and of course frequently form such decisions as sober and mature reflection condemns, and the innocent suffer with the guilty.

Murder by violence and fury is a heinous offence, but legal murder by incorrect verdicts is infinitely worse. The slightest sacrifice made to public opinion, can never be wiped away in a case of this kind. The damned spot can never be washed out. It will go down to the latest period without atonement. Time will point his finger at such a stain in every hour of his existence. The British Admiral Byng fell a victim to a momentary spasm of public indignation; and his ghost enters to mar the joy of every festival instituted to commemorate the naval glory of Britain. He did not fall by intrigue or malignity, but by an extraordinary impulse of public resentment.

Gentlemen, the advocate for government will follow us. His talents and experience will be set in array against the prisoners. From the nature of his office, he holds the flaming sword of power, which turns every way to destroy, and when such an instrument

is wielded, as it now is, by the hand of genius and learning, what unfortunate wretch can escape, unless the justice and mercy in your breasts turn its edge and ward off the blow. The prisoners are in your hands, gentlemen, under the *instructions* of a humane and a wise court, who individually could say, "*have I any pleasure at all that the wicked should die?*" Men not wavering "at opinion's shock;" but men who, from christian mercy and philanthropic tenderness, love, when possible, to save.

The counsel in behalf of the prisoners having concluded their defence, George Blake, Esquire, the District Attorney, addressed the jury, on the part of government, in the following terms:—

May it please your Honors,

And you, Gentlemen of the Jury,

Having entertained the belief, at the commencement of the present interesting prosecution, that it might possibly be necessary for the prosecutor to bring to its support a degree of learning and talent, in some measure proportionate to the public expectation, and to the importanoe of the cause, in every point of view, I am not ashamed to avow the fearful apprehensions I had felt of my inability to perform the duty in a manner suitable to the occasion. I scarcely *dared presume* that the measure of strength which I possess, either of body or mind, would enable me to endure, singly and alone, the weight of responsibility which was about to devolve upon me.

I will, however, frankly confess to you, gentlemen, that upon further consideration of the testimony, and upon a more full and deliberate view of the whole merits of this cause, every apprehension of the kind before mentioned, has been completely dissipated; and in every thing but the power of depicting, with sufficient force and strength, the deep malignity of the crimes imputed to these defendants, I have the confidence to believe myself as well qualified, as though I were a much abler advocate, to do every thing that can be necessary in vindicating, upon the present occasion, the cause of justice.

It is a consideration which has afforded much relief to my mind, on this occasion, and which to you, also, must, I am persuaded, be a source of no inconsiderable satisfaction, that whatever may be the magnitude and the importance of the cause now on trial, it is one of no real, intrinsic difficulty; that it is a cause upon whose merits, either as to the law or the fact, it would seem scarcely possible that an upright and intelligent jury, such as I well know you are, could be brought to pronounce an unjust or erroneous decision.

The nature of this indictment, and of the crime therein described, has already been fully stated to you at the opening of the prosecution. The questiou which arises upon it is, whether the defendants at the bar, or which or either of them, are guilty of the murder of Thomas Baynard, in manner and form as alleged against them. In the examination of this question, although many other

mnrtal mnrders and misdeeds have, necessarily, been npened to your view, in the course of our evidence, yet I am bound to agree with the learned counsel for the prisoners, that it is the specific crime alone, which is charged in this indictment, that must be regarded as the only proper object of your present inquiry. I agree, also, most fully, with the gentlemen on the other side, that it is incumbent on the government, if they would claim your verdict of conviction against all or either of the prisoners at the bar, to substantiate the accusation, by clear and indisputable evidence; and that if a *reasonable doubt* shall, after all, be perceived to exist in the case, it ought to be considered, upon the humane principles of our law, as affording most unquestionable grounds for an acquittal.

It is, however, gentlemen, a very erroneous and unfounded positinn which has been assumed and pressed upnn you, with so much confidence, by the learned cnunsel for the prisoners, and which indeed appears to be the basis of all their refined and ingenious speculations on this occasion, that the bare *possibility* of innocence, can be sufficient, in a legal point of view, to counteract, even in a capital trial, all the fair and ordinary presumptions of guilt. If such a doctrine were tn hold good, it is easy to perceive, that the whole system of criminal jurisprudence, and every salutary regulation by which are governed, the *minds* and *morals* and *actions* of man, as a member of society, would, at nnce, be overthrown. I need not remind ynu, that, in the administration of justice by any earthly tribunal, it is obviously impossible to arrive at any certain and infallible results. It is by the aid of that science only, whose employment is confined to the actual *numbering* and *mensuration* of its subjects, that we can ever hnpe to establish the truth of any proposition, however plain or simple, with absolute, unerring certainty, and without leaving upon the mind a possibility of doubt. With regard to every thing pertaining to the science of law, the affairs of civil government, as well indeed, as all the common and ordinary concerns of life, if we act at all, we must be content to proceed without the aid of demonstration, and upon the ground of mere probabilities and presumptions. So true is this gentlemen, that I will venture to pronounce that, upon the principles which have been advanced by the council for the prisoners, it would be utterly impossible, in any case of murder that can be imagined, to bring the offender to conviction, unless every member of the jury impanelled for the trial of the cause, should happen to have been himself, an eye witness of the deed, and could therefore depend on the evidence of his own senses and perceptions. Let us suppose a case, where the death of the party slain, as in the instance now before us, appears to have been instantaneous. A man is found dead in our streets, and from an examination of the body, it appears that the death may have been caused by a gun shot wound. Several, if you please, a half a dozen witnesses were present at the death, and are produced in court, to testify relative to its cause, and the circumstances attending it. They are all men of credibility, and their respective statements of the transaction are clear,

and consistent. By the united testimony of these witnesses, *it would* appear that the party accused of the murder, had, in their presence, levelled and discharged a musket upon the deceased; that he fell, and expired in their presence; and that the firing of the gun, as far as they could judge, must have been the immediate cause of the catastrophe. Here, gentlemen, is presented to you a case, where the evidence is clear, and what the law would denominate positive. Yet even here, and it is one of the strongest examples that can be stated, a moment's consideration will convince us that a verdict of conviction could never be pronounced, but upon the strength of that evidence after all, which results from mere analogy and deduction, and which is not positive, but merely circumstantial or presumptive. Suppose, in the case I have imagined, the fact of discharging the musket were admitted; that the evil and deliberate intention were avowed; but that some higher degree of proof, than that which is derived from mere analogical reasoning, and the opinions of frail and fallible men, should be demanded at the trial, by way of establishing, beyond *all possible doubt*, that the act complained of, was *the cause of the death?*

Is it not manifest, that, *as to the cause of the death*, in the case here supposed, which, on every indictment for homicide, is no less a leading and principal question than the evil intention of the party accused, the evidence would be derived only from the opinions and judgment of men, and would therefore belong to that same species of presumptive proof, which has been deemed so *inconclusive* on the present occasion?

But, gentlemen, the difficulty, the impossibility, indeed of *demonstrating*, by means of mere direct, and absolute proof, every fact which is essential to constitute the crime of murder, may be still more strikingly exemplified, in a case where the death, instead of being sudden, shall appear at the trial, to have been protracted and lingering. We will suppose the case, when the charge in the indictment is for killing, by the application of poison. It is proved before the jury, that when the deleterious drug was administered to the deceased, he was in the full vigor of health, but immediately afterwards, exhibited the usual symptoms which might be expected in such a case. "He *languishes, yet lives*," for weeks and even for months, but dies at last, from the apparent effects of the fatal draught. What man is there upon earth, who without a doubt, I will not say a *reasonable* doubt, upon his mind, could pronounce, in such a case, a conviction of murder? The poison may be proved to have been deadly, and infallible in its consequence; but who could have the presumption to declare, without *a doubt*, that it was the efficient cause of the death that ensued? Who would venture to pronounce, with that entire *certainty*, which seems to be considered so essential on the present occasion, that the intended victim may not, after all, have perished by the supervention of some other mortal disease; that the man, whose breath "was in his nostrils," who at every moment of his existance, was subject to the sudden, and awful visitations of Provi-

dence, may not have been thus snatched by the express decree of his Maker from the fell purpose of the murderer?

Gentlemen, in this and in other countries, the cases of the description here alluded to, are not by any means of unfrequent occurrence; and yet it was never imagined that the reputed murderer could escape from justice upon *any doubts* or *speculations* of the nature here described.

In the case just supposed, the judgment of the jury is aided at the trial, by the skill, and experience of the physician; the nature of the poison is examined, its usual effects on the human constitution explained, and by this mere process of deduction from *reasoning* and *analogies*, the mind becomes as fully convinced, (not however without the *possibility* of error,) as to the cause of this death, as though the evidence of the fact were direct and positive.

In a word, gentlemen, the legal principles of evidence, in criminal and even capital causes, notwithstanding the multitude of cases which have been read to you from the books, and all the ingenious reasoning of counsel, with the view of intimidating you on this subject, are by no means, essentially different from such as are applicable to mere questions of property, or any common concern between man and man. In all cases, whether civil or criminal, the decision of a jury should be the result of careful consideration, the expression of a clear, honest, unhesitating opinion, according to a manifest preponderance of the evidence; and more than this, cannot be expected of those to whom belongs the determination of any fact before an earthly tribunal.

Gentlemen, I have heard it stated, and from my own observation of the visionary scruples, which have sometimes been excited by the power of eloquence, in a capital trial, I am induced to believe the fact, that a juror has been known to favor an acquittal in such a case, not because he could doubt the guilt of the accused, but because, as every thing was uncertain, he had distrusted his own capacity to form a correct judgment upon the question.—Permit me to say, that, however chimerical and preposterous a hesitance on such grounds, may seem to be, it is not more so, in my own view of the subject, than that a doubt should be entertained, with regard to most, and indeed all the material facts which I have attempted to establish before you, on the present occasion.

Having submitted to you these preliminary observations, which in reference to the whole scope and bearing of the arguments on the other side, have appeared to me, if not necessary, yet as being seasonable and appropriate, I will now proceed to the immediate consideration of the evidence which has been adduced in support of the present indictment. No witnesses have been sworn and no evidence adduced in behalf of the prisoners; but the grounds assumed by their counsel, are—

First, that it has not been proved before you, beyond *all doubt*, that Thomas Baynard, whose murder is charged upon the pri

soners, is *certainly* dead; that the body of this man not having been found since it is supposed to have been cast into the sea, affords legal ground of doubts as to the fact of his death.

Secondly, that from all the evidence in the cause, it is apparent that the principal witnesses for the prosecution, namely, Onion and Samberson, were accomplices in the crime, if any were committed; and that the testimony of such witnesses is insufficient to justify a conviction.

Thirdly, that neither of the prisoners, and particularly Nathaniel White, had been sufficiently identified as principals in the death of Thomas Baynard.

Gentlemen of the jury, it will be my endeavor, in the course of my remarks upon the evidence, to refute each of these objections; and I shall be much disappointed indeed, if I do not succeed in this attempt, to your entire and most perfect satisfaction.

At the very presentment of the case, as I have just stated it to you, it is obvious that the questions which have arisen, are principally, if not entirely, questions of mere fact, upon which it is the peculiar and exclusive privilege of a jury to determine. With regard to the principles of law which are applicable to the case, I am not aware that there is any material disagreement between myself and the learned counsel for the defendants; and I would take occasion here to repeat, that if you rightly understand, as no doubt you do, that little portion of law, those few plain and very familiar principles laid down in the half dozen lines that were read to you from *one book* of authority, at the opening of this cause, you are in possession of all the law that can be necessary to lead you to a just and correct decision.

Are you then convinced, from the evidence which has been given you; are you convinced, beyond any *reasonable doubt*, that *Thomas Baynard* the person mentioned in this indictment, was actually "*killed and murdered*," on the high seas, by all or either of the defendants at the bar?

I have perceived, gentlemen, with some degree of surprise, that the very intelligent counsel who have displayed so much talent and eloquence in behalf of their clients, have nevertheless, throughout the whole scope of their remarks, entirely misconceived my views of the evidence in this cause, by supposing that the fate of this indictment were *entirely* or *materially* dependant upon the uncorroborated testimony of the two supposed accomplices, whose credibility, and even *competency* has been considered so extremely questionable. That the testimony of these witnesses may be important, by way of explanation and confirmation of the presumptions naturally arising from other evidence which has been adduced, I certainly will not, for a moment, deny; but that it is not the basis of all the proof which has been exhibited in support of the prosecution; that it is not, indeed, the main, and most essential branch of that proof, will be made, I think, to appear to you, in the sequel of my remarks, as clear as a sun beam. The

truth is, gentlemen, that from my first acquaintance with the circumstances of this cause, I have always considered that the evidence which would be derived from the testimony of Mr M'Kim, the owner of the schooner Plattsburgh, and from Captain De la Roche, the gentleman who was despatched to bring that vessel home from a port in Norway, as being the evidence that lie at the foundation of the cause ; and every thing else might be regarded as collateral, and merely auxiliary. In place, therefore, of resting upon Onion and Samberson for my principal proofs, as the gentlemen on the other side seem throughout to have considered it to be my intention, I shall be disposed to resort to their statements, merely for the purpose of ascertaining the particular incidents and circumstances attending a transaction, the reality of which will, in my opinion, be sufficiently established, not indeed *with absolute certainty*, but upon the strongest probabilities and presumptions arising from the testimony of the other witnesses.

In a word, I think I shall be able to satisfy you by the testimony of M'Kim and De la Roche, that the murder complained of, must undoubtedly have been committed by the prisoners at the bar, and hence, that the testimony of Onion and Samberson are no otherwise essential than as serving to shew the *time when, manner how*, and other particular circumstances attending the perpetration of the deed.

So strong, indeed, is this impression upon my mind, with regard to the nature and bearing of the evidence first alluded to, that I declare to you, gentlemen, that were it not for the tremendous responsibility which rests upon me ; were it not for the deep interest which you, and every other man in the community must feel, in the cause of public justice, and as to the result of the present trial, I should not, by any means, have considered it an act of presumption, had I consented to go on with the cause, without the aid of a single word of testimony from either of the two *reputed accomplices*.

Let us then examine the evidence that has been adduced, independently of these men. What is its import, and what the conclusions which, *almost* necessarily result from it ? From the testimony of Mr. M'Kim, (one of the most distinguished and respectable citizens of Baltimore,) we learn, that he was the unfortunate owner of the schooner Plattsburgh ; that in the summer of 1816, she was laden at the port of Baltimore, with a valuable cargo, consisting of about an hundred and twenty or thirty thousand pounds of coffee, and specie, in gold and silver, amounting to upwards of forty thousand dollars, and destined for a voyage to the port of Smyrna, in the Mediterranean ; that the command of this vessel, for the voyage, was confided to a Capt. Wm. Hackett ; that a person, by the name of Frederick E. Yeizer was her first officer ; and Stephen B. Onion, one of the witnesses for the prosecution, the second mate ; that the trust of supercargo for this voyage, was confided to an amiable and deserving young man, whom the owner of this vessel had patronized, and befriended, by the name

of *Thomas Baynard ;* the same who is referred to in the indictment, as the victim of these murderers!—That this vessel was. originally, built by Mr. M'Kim ; was an excellent vessel, and unusually well found, and provided for the contemplated voyage ;—That the captain. both mates, and supercargo, were all of them, natives and residents in the state of Maryland ; for a long time, therefore, had been well known to Mr. M'Kim ; that all had sustained unblemished reputations. and that the families and connexions of each of these individuals, were decent and respectable. It appears also, from the testimony of Mr. M'Kim. and from the voluntary concessions of the prisoners, by their counsel, on the trial, that the entire crew of this vessel, at her departure from Baltimore, (including the cook, whose name is not remembered, and Samberson, the cabin steward,) made up the number of fourteen men ; and, that the five prisoners at the bar, together with a person by the name of Stromer. were of this number ;—That the vessel. thus provided and manned, took her departure from the port of Baltimore, apparently. with every circumstance auspicious, on the first of July, of the year before mentioned ;—That Mr M'Kim, the owner of the schooner. had received a letter from his captain, a few days subsequently, advising him of the departure of his vessel from Cape Henry, upon the contemplated voyage ; that from that period, to the present day, neither he, Mr. M'Kim, nor any person. so far as he could say, had ever seen. either Captain Hackett, Baynard or Yeizer, nor received from either of them, by letter, or otherwise. a syllable of intelligenee.

It appears, however. from the statement of this gentleman, that having been apprised. by information received from abroad, of the fate which had befallen his vessel, and of her arrival at an obscure port in Norway. he despatched a messenger, Captain De la Roche, whose testimony is also in the case, for the purpose of looking after the property, and bringing it home to Baltimore The vessel, with some small part of the property on board, was brought back in safety, to Baltimore, by Captain De la Roche. in the summer of 1817 ; and it is testified by Mr. M'Kim, that he received at the same time, or at some time subsequently, from a Mr. Isaacson, the American Consul, at Christiansand. in Norway, remittances of divers sums of money; amounting to several thousand dollars, *purporting to be* portions of specie, which had been found in the possession of the fugitive crew of the schooner Plattsburgh, and taken from them, for the benefit of the owner.

Thus far the testimony of Mr. M'Kim, as entirely unconnected with that of the other witnesses.

By Capt. De la Roche, we are informed that he was appointed, at the time and in the manner stated by the preceding witness, to go in pursuit of this property ; that he arrived in Norway in the month of April, 1817, and immediately found the vessel at the port of Christiansand, in the custody and possession of a Mr. Isaacson, the American Consul at that place ; that some small portions of merchandise, together with a few empty coffee bags, were

the only articles then remaining on board. He testifies, also, that the vessel was sound and in good order at this time, having, indeed, undergone, apparently, some very trifling repairs, but to have sustained. as far as he could judge, no material injury from any marine disaster; that he brought this vessel home to the port of Baltimore, together with a remittance to Mr. McKim, of several thousand dollars, from Mr. Isaacson, *purporting*. according to the statement of this gentleman, to be money, taken from the reputed crew of the Plattsburgh, or resulting from the sale of certain portions of the cargo on board at the time of her arrival in Norway.

Such, gentlemen, is the testimony of these two highly respectable and impartial witnesses; and you will perceive, that it is altogether unmixed with any thing which they, or either of them, could have derived from mere rumor or hearsay, either here or in Norway. The statements they have given you (being indeed the only kind of statement they could ever be permitted to make, in any case, civil or criminal, according to the familiar rules and principles of law) comprise such facts only, as were within their own personal observation and knowledge. What then, gentlemen of the jury, is the inference which naturally results, may I not say which *necessarily* results, from this presentment of the subject? In my own view of the circumstances, the conclusion is unavoidable, and would so be considered by any reasonable man, not acting in the capacity of a juror, and upon the tremulous responsibility of his oath, that a most flagrant act of piracy had been committed on board this vessel; and further, that several foul murders must, necessarily, have been the precursors of the piracy.

We have it from the owner of the vessel, that she was almost new, well provided, and in excellent order, at the time of her departure from Baltimore; that her cargo was valuable; and, most unfortunately, as this may probably have been *the root* of all the *evils* which succeeded. had a large amount of specie on board. The vessel was bound to Smyrna, and took her departure from port with every fair prospect of reaching, in safety, the place of her destination. Here let me ask, why she did not arrive there? Through what fatality has it happened, that instead of proceeding to the Mediterranean. she is first discovered near the Categat; in place of delivering her valuable merchandise and money at Smyrna, why is she found deserted and abandoned at an obscure port in the kingdom of Norway? That she had met with no marine disaster, nor was compelled by any stress of weather thus widely to diverge from her proper course, is most perfectly apparent from the whole scope of this evidence. The deviation then was voluntary, unauthorized, criminal! It must have been no other than a piratical "*running away*" with this vessel, by some person or persons; and whether any murders were or were not, superadded to this piracy, it is most certain, that the agents in the transaction, *whoever they may have been*, were guilty of a high and most horrible offence. Who then, are the offenders? The compass of this inquiry is extremely narrow and limited: it is not like the case of

some murder which has been committed on land, where we are obliged to proceed in the midst of clouds and darkness, and to look over the wide world, in pursuit of the offender. If any crimes have been committed, it is to the vessel, to the people on board of her, consisting of precisely seventeen individuals, we must look, in order to detect the authors of the mischief; for it is repugnant to every circumstance in the case, that, while traversing the ocean, she was overcome by *assailing thieves* from without, and by them taken, and so suddenly and mysteriously abandoned, with most of her valuable cargo on board, in an obscure port in Norway.

From my own view of the subject, it results then very naturally, almost inevitably, I may say, either that the three officers, Hackett, Yeiser, and Baynard, who were on board this vessel, at her departure from Baltimore; who have never since been heard of, and are not now supposed to be existing on the face of the globe, were principals in the piracy alluded to, or that *they* were destroyed, and the whole or a part of her crew were, in reality, the pirates and the murderers. It is, I admit, gentlemen, within the sphere of bare possibility, that the first of these hypotheses is the true one; it is, indeed, physically, though I should scarcely admit it to be morally possible, that Captain Hackett, his mate, Yeiser, and the other gentleman I have named, all of whom were residents in Baltimore, who had there, their families, connexions, and home; who, more especially, were in some measure, the confidential friends of the respectable owner of this vessel, and bound to him, at any rate, by every tie of gratitude, as well as honor, for the faithful performance of the important trust reposed in them, may, nevertheless, all at once, in some evil hour, without any competent motive, or inducement, indeed, with no motive at all, that can be imagined, have concerted the base project of betraying the confidence of their friend and employer, and thereby, of committing an offence, whose least injurious consequence to themselves, must have been, most inevitably, perpetual exile from their country, their families and friends. It is possible, that these three men, whose character and standing in society, were so respectable at the time of their departure from Baltimore, may, notwithstanding, (such is the depravity of our nature,) in less than one short month thereafter, have corrupted the morals of the *honest* and *harmless* men, who were subject to their control on board this vessel, may have prompted them to cooperate in a foul scheme of piracy, and by way of reward for their services, should have surrendered to their possession, in Norway, the vessel, the cargo, the money, and every thing which could have been the motive or object of all this complication of crime. It is within the sphere of possibility, also, proceeding upon the unassisted testimony of M'Kim and De la Roche, that the three men I have alluded to, instead of having been murdered on the fatal night which has been spoken of, are yet in full life; that, ashamed of their excessive folly and crimes, they may still be groping in some obscure, inscrutable corner of the earth, from whence their voice has not been, nor ever will, again, be

heard, by those with whom they were once acquainted and connected. All this I admit, gentlemen, is barely possible; and if *mere possibilities* are to have influence against the evidence in this case, it is, undoubtedly, an hypothesis which is deserving of consideration. Permit me, however, to inquire, if there be in it any thing natural or probable?. From the testimony of M'Kim and De la Roche, I feel myself warranted in saying, that the vessel in question, together with *all the cargo* and *all the money*, on board of her at the outset of this voyage, are fairly, and very satisfactorily, traced to the possession of the prisoners at the bar, and their comrades of the crew, after her arrival at the port of Mandahl, in Norway. The vessel, most certainly, was found there; and that the prisoners were there also, is sufficiently manifested in this cause by the circumstance, that they were all speedily apprehended in the vicinity of that place, after the arrival of the vessel. Under these circumstances, I submit to you, gentlemen, if it be not sufficiently apparent, upon the legal principles of evidence, that the schooner Plattsburgh, with her cargo, found her way to Norway through the voluntary agency of her crew, and that, on the other hand, notwithstanding the promptitude and facility with which information of every sort, and, more especially, the tidings of *any marine* or *commercial disaster* are, at this day, wafted from one extremity to the other of the commercial world, never since has there been received, from Norway or elsewhere, a single lisp or intimation tending to shew that the three individuals, who had originally the charge and custody of this very valuable property, may yet be in existence. Upon such a state of the evidence, I submit to you, gentlemen, if it be not sufficiently apparent that this vessel, with her original cargo and specie on board, must have found her way into Norway through the voluntary agency of her crew; and that Hackett, and Yeiser, and Baynard must, by some means, *foul* or *fair*, have been *disposed of* or *removed* from on board, in the course of the voyage. It does seem to me, gentlemen, that this inference is irresistible. Consider that there are, at this moment, in this court house, and now before your eyes, not less than seven individuals, more than a moiety of the crew who sailed in this vessel from the port of Baltimore, upon this disastrous expedition; and who, of course, must be perfectly well acquainted with every incident and circumstance of the voyage. Upon the clearest principles of law and common sense, have I not, then, a right to demand of these men, and of the prisoners at the bar in particular, *where are your officers?* Where are *the three* who embarked with you, whom you engaged *to serve* and obey, and whose absence is now so mysterious and unintelligible? You are found, virtually at least, in possession of this vessel, of part of the property which was on board of her at your shipment; she was bound to the Mediterranean—by what disastrous circumstance has it happened, that she is found, and in your possession, at a place so wide of her destination? If your officers and your supercargo have, by any accident, perished on the voy-

age, how happens it, that more than two years should have elapsed, and yet not an intimation should be known to have proceeded from you, respecting such a casualty? It is true, indeed, gentlemen, that the prisoners now standing at the bar, are no longer at liberty to make answer to these questions. Their own mouths are now closed; they cannot be permitted now to speak but by the mouths of their witnesses. It is, however, not less true, that abundant time and opportunity have been afforded them to make the necessary explanations. If, by any peril of the sea, they had been driven, involuntarily, from their course; if, more especially, so singular and uncommon a series of disaster had occurred on the voyage, as the death, by natural causes, of the three principal personages who had so lately the charge of this vessel; how happens it that we hear not a word of the *public protests*, of the customary statements and declarations being made on her arrival in Norway, by way of proclaiming and perpetuating the truth of events of so rare and unusual occurrence? How happens it, that these unfortunate, and bewildered mariners, having been driven by dire necessity and distress, upon the coast of a civilized and hospitable people, were not cherished and protected, instead of being pursued and imprisoned, as fugitives and felons? To questions like these, as well as to the many others of like import, which might be put, and which I have a right to put to these men, the answer is obvious; they were found, on their arrival in Norway, as they are now seen here at the bar, utterly destitute of all those usual means of explanation, which, if innocent, would *there*, as well as *here*, have been most unquestionably within their power.

I feel, gentlemen, that I am warranted in stating to you, and with no small degree of confidence, that, from the views I have taken of this evidence, it must be sufficiently apparent to every reasonable and unprejudiced mind, even enough so, I think, to justify a juror, under oath, to predicate his verdict upon the fact, that neither Hackett, nor Baynard, nor Yeiser, were on board the vessel at her arrival in Norway; for it is utterly incredible; it is at variance, indeed, with every thing we know of nature, or the character of man, that if such were the case, not a syllable should ever have been heard of these men, within the compass of the almost three years which have intervened, either in that country or this.

Does it not, then, result as a necessary conclusion from the premises, that the unfortunate men alluded to, were *removed* from on board their vessel by foul and unnatural means? That a flagrant piracy, at least, which stands next to murder on our catalogue of crimes, was committed; and that some, or all of the ship's crew, must have been concerned in its perpetration? To my mind, gentlemen, the inference is irresistible. Considering, moreover, the nature of this offence, the place where it occurred, and the physical force which must have been employed in its execution, we have but little less ground for the inference, that a majority, if not the whole of this crew, must have been the parties concerned. It would be unnatural, it would be preposterous to suppose, that even the fear-

less Stromer, or the active and sanguinary Williams, would have had the rashness to attempt, single and alone, an open and murderous assault upon all the officers of this vessel. Bold and intrepid as they are, they would not have adventured on so hopeless, so fearful an enterprise on the ocean, without a previous knowledge, and assurance of the general cooperation of their comrades.

All this, I admit, however, gentlemen, is but mere inference and presumption; and that it differs in denomination, though not, I think, in force, from that *positive evid nce*, which the learned counsel for the prisoners, have considered to be so essential to produce a conviction On the whole, gentlemen, I do contend, that the testimony of the two witnesses, M'Kim and De la Roche, connected as it is, with the intrinsic evidence which is to be found in every part of the case, is abundantly sufficient, in law, to shift the burden of proof upon the prisoners, and to authorise my calling on them, peremptorily and loudly, for satisfactory explanation of every thing in their case, which may now seem doubtful or mysterious. A piracy, if not a murder, and more than *one* murder, is brought home to their very door; and it remains for them to show that other wretches, not they, were the perpetrators of the deed

Thus far, gentlemen, my observations have been directed to the mere circumstantial evidence which exists in this cause. By way of demonstrating to you, that the inferences I have deduced from it, are correct and irrefragable, I will now proceed to show you, by that *direct* and *positive* proof, which has been so frequently demanded by the counsel for the prisoners, in the course of their argument, the time and place, and every circumstance of the murder, which is described in this indictment.

With this view, gentlemen, I must call your particular attention to the testimony which was delivered to you by Onion and Samberson.

First, however, it may be useful, in order that I may follow the learned counsel for the prisoners, in the course of their observations, that I should consider, for a few moments, the question of *credibility*, and even *competency* which has been so much agitated in relation to these witnesses.

It has been contended, and with a degree of emphasis which may have made some impression upon your minds, that if any crime were committed, the witnesses themselves must have been accomplices in its perpetration; that being *accomplices*, they have kept back the confession of their guilt; and hence, that the entire mass of their evidence must be rejected. Gentlemen, it is extremely easy to advance, but it would be difficult indeed, to substantiate, in point of fact, by the slightest color of evidence which has appeared in the cause, the truth of this position

With regard to Onion, it has been proved to demonstration, not by his own single testimony, but by the evidence also of Samberson, and by every circumstance in the case, that in place of being confederate, he was marked out by the murderers to be one of their victims. He was an officer of the vessel, and it is evident

that at least every officer on board, was included in the death roll of these murderers! It is not from the declaration of Onion alone, that we derive the proof of the deadly assault that was made upon him, or the wounds he received. It is not from his single statement, that we are informed of the almost miraculous manner of his escape, the singular place of his concealment, his supplication for mercy, and the terms upon which the prayer of the petition was, at last, granted by these assassins. It is not upon the strength of his testimony alone, we are to believe, that while yet trembling in his hiding place, with the most fearful apprehensions of his fate, one of the prisoners at the bar, was standing sentinel, with his musket, by way of guarding every avenue against escape; nor that the same inhuman monster was heard to call on his comrades "for the halliard to rouse the bugger" from his position. Permit me to remind you, gentlemen, that all the circumstances I have enumerated, with many more which I might mention, of like signification, although they were stated by Onion, were also stated by Samberson, whose innocency and credibility, as I shall presently attempt to convince you, is absolutely beyond the reach of all suspicion. It is also in evidence, from the testimony of both the witnesses, that it was the watch of Onion below, and he was sleeping in his birth, when the *false* alarm was given by Williams, to serve as a *signal* for commencing upon those scenes of blood and slaughter, which so speedily ensued.

Are there then, gentlemen, any, and what other circumstances in evidence before you, that should lead you even to suspect this man, of confederacy in the murders? It is stated to you, and indeed, the fact is openly avowed by himself, that he received, not however without some degree of hesitancy, his full share of the booty which was divided among the crew; that in obedience to the suggestion of Stromer and of Williams, who were now his superiors, he was compelled to act in his former capacity of second mate, under the newly organized government which succeeded the insurrection; that he continued to assist, as heretofore, in the navigation of the vessel; that he altered the papers, and acted with the others in attempting to deceive the officer by whom she was first boarded, at the first moment of her arrival at the obscure port of Norway. With regard to the circumstances of the voyage, he has also confessed to you without reserve. But all this, to take the whole of his *confession* (if so it may be denominated,) together, appears, most obviously, to have been but in compliance with the dictation of *those* who had spared his life, on condition of his secrecy and obedience. What then, gentlemen, is there in all this, which can authorize you to infer, nay even to suspect, that he may have been confederate with the cut throats? Had all this apparent subserviency to their purposes been voluntary, even after the fatal deeds were consummated, I will have the frankness to admit, that it would have affected, very deeply, his credibility, on the present occasion. As *being accessary after the fact*, his offence, in such case, would indeed have amounted to no

more, by the laws of this land, than a mere misdemeanor; yet I will admit that even a connexion like this, with the principal offenders, in relation to crimes of such atrocity, might very properly be considered as the evidence of such degradation, both of feeling and principle, as to render him, in any case, unworthy of your confidence.

But, gentlemen, I beg you to recollect that all these injurious suppositions with regard to the standing of this witness, are merely gratuitous, and scarcely to be indulged, even in the way of hypothesis. He tells you, gentlemen, and from every thing which appears in the history of this case, I submit to you if the declaration be not, in every respect, probable and consistent with human nature, that from the bloody night of the 23d of July, until the moment of his imprisonment at Copenhagen, and his subsequent deliverance from *the fiends* who had surrounded him, the whole course of his conduct had been influenced by the terror of their displeasure. But it is objected, that he participated in the plunder. Permit me to inquire, which of *you*, gentlemen, under the circumstances that have been described, would have dared to do otherwise? From the testimony of the witness, it would, however, seem that he did not omit to express his scruples on the occasion alluded to; and even had the indiscretion to propose, as a testimony of his thankfulness for *the life* that had been spared him, to surrender his portion of the booty, for the benefit of others, whose crimes had acquired it, and who, therefore, had higher claims to its enjoyment.

Permit me to ask again, which of you, gentlemen, with the bloody Stromer and the eagle-eyed Williams perpetually before your eyes, and standing as the inquisitors of your very *thoughts* as well as actions; subject as a slave to their control, and upon the wide and trackless ocean, would have had the fortitude, may I not say the rashness, to betray such misgivings? For my own part, I am not ashamed to avow, in the presence of this honorable court, in your presence, and before the multitude who hear me, that on the occasion alluded to, and in the midst of all the terrors of such a scene, as has been described, I should not have had the courage to manifest the slightest symptom of repugnancy. I should, seemingly, have gone all lengths with these blood hounds; I would have protested, again and again, my allegiance to their cause, and not until I found myself beyond the reach of their daggers, should I have had the heart to proclaim their malefactions. With the exception of that single instance of indiscretion, that has been alluded to, which serves but to shew that the witness had as much honesty of intention, and a little more fortitude than most men would have manifested on a similar occasion, he appears to have acted throughout, on the principles I have spoken of, on the principles, in fact, which are implanted in our nature, and which no man could disregard, who is concerned for the preservation of his own safety and existence. The same

observations are applicable to the conduct of this man, after his arrival in Norway, and when, (judging from what would have been his condition, under similar circumstances, in a country like this,) it may possibly be supposed, that he could no longer have been actuated, or restrained, by the influence of fear. On this head, gentlemen, it is of some consequence, that you should again call to mind, the explanation of this witness. The arrival of the vessel was at an out port, but very thinly inhabited. He was a stranger to its population, its language, its laws, and its government. He was once only on shore, and then he was accompanied, and every footstep was traced, by the same ferocious assassin, who had spared his life, on the express condition of secrecy and fidelity. Here then, gentlemen, it would have been evidence, rather of madness than honesty, had he proceeded, even if he had the physical power of doing it, (which is not a little questionable) to the disclosure of his secret. He might, indeed, have made his declaration, with less dread of the consequences, during his fortnight's residence in the city of Copenhagen. Even here, however, he was a stranger to the government and the laws. Still he was accompanied, and, without doubt, carefully overlooked, by two at least, of his most savage and vindictive associates. If he were here, beyond the reach of immediate assassination, may it not also be said, that he had yet reasonable ground of apprehension, that he might suffer from conspiracy and contrivance? Had he entered his complaint before the magistrate, the truth of his statement might, and perhaps must have been left to depend on the faith of his own uncorroborated testimony. A plurality of voices would have been against him, and it was by no means improbable, indeed the subsequent proceedings at Copenhagen, have shewn the correctness of the supposition, that the accusation he should make against others, would instantly be retorted, and, perhaps, fastened upon himself. Under all these perplexities, I submit to you, gentlemen, if the resolution which this witness assures you he had formed, of reserving the promulgation of his secret, until his return to America, is a circumstance in any degree unnatural, or inconsistent with the purest intentions? It may not, indeed, have been the course which a man of much more intelligence, and in a higher grade of life, would have pursued on the occasion; but does it necessary imply, *in this case*, a disposition to favor the commission of crime, or to screen the perpetrator from detection? In my own view of the subject, the situation of this witness, even when certain protection would, as *we know*, have been afforded him in the great capital of Denmark, was, nevertheless, for the reasons I have stated, in no small degree, critical and embarrassing; this also entitles him to the most favorable interpretations of his conduct.

It is, moreover, a circumstance, much in favor of this witness, that upon his first examination, before the magistracy of Denmark, his disclosures were voluntary, full, and without the least appearance, (as far as we are informed) of a disposition to concealment;

and still, more especially, that all this occurred, when he had reason to suppose that he was the first to disclose the horrible scenes of which he had been a witness. Where, then, gentlemen, is the ground of that position which has been so confidently assumed by the counsel for the prisoners, that the principal witness to convict them, is an accomplice in their guilt? With regard to the remaining witness, Samberson, whose testimony you have heard, little has been urged, and most surely, nothing has been proved, that can lead you to suspect, that he, also, could have been confederate with these pirates and murderers! That he was on board the vessel, and by construction, therefore, present, at the commission of the crimes; that he was permitted to live, and (most fortunately for the cause of public justice) to retain the power of telling his artless story to you, on the present occasion, when his life was once at the mercy of these wretches, and was spared, seem to be the only circumstances to countenance the supposition, that he may, *possibly*, have been accessary to their crimes. But, gentlemen, how happens it that this man yet lives; that *his* body also was not mingled with others which were committed to the waves? With reference to all the evidence in the case, the answer to this question is plain and obvious. He was viewed on board the vessel, as you must have regarded him here, a humble, harmless, inoffensive man. I must not, however, pay such unmerited compliment to the heart of these monsters, as to admit for a moment, even in the way of supposition, that it could have been for their regard to any qualities like these, that his lips also, were not sealed in death, on the fatal night. Be assured, gentlemen, it was not for his innocence, nor for his harmlessness, but for *his utility* and *future services*, that the life of this man was neither threatened nor assailed. He was, it seems, the cabin steward, a mere servant to the officers, on board their vessel. His birth and place of residence was the cabin; and the attendance of such a man would be useful, and almost indispensable to the murderers, who were, now, in stately authority over the ship. He belonged to no watch, and had no intercourse with the mariners, either in relation to their labors or their pastimes. On the other hand, in regard to the officers of the ship, he was "in double trust," as their servant and their friend, "*who 'gainst their murderers would have shut the door, not bear the knife himself.*" He was precisely where he should have been, in his birth, and asleep, (if you believe the testimony of Onion) at the dread hour of midnight, when the scene of foul murder was commenced.

Gentlemen, with circumstances like these before us, permit me to inquire, would it not be an outrage upon the very front of truth, were we to believe, or even to imagine, that this humble man may have concurred in thought, or in deed, with the views of these assassins? The idea is monstrous and can't be endured.

With respect to this witness also, it has been urged upon you, that his acceptance of a share in the common plunder of the vessel, is evidence at least, of his disposition to sanction and conceal

the crimes by which it was acquired. On this head, gentlemen, I have nothing to add to the explanations which have already been given you in my answer to a similar suggestion, (I will not call it argument) which was pressed against Onion. I must pray you, however, to remember that, if Onion, a man, evidently, of some strength and intelligence, be excusable, on the ground of terror and duress, how much more forcible is the apology for the shivering, powerless mortal, who was the mere slave of the monsters.

It is, moreover, a circumstance which must not escape notice, that the imputation of any improper concealment of the crimes, is entirely inapplicable to his case. From the whole course of the evidence, it is clear, beyond doubt, that the first developement of the bloody scenes on board the Plattsburgh, proceeded from him, and that there never was a moment that the disclosure was kept back, when it could have been made, but at the peril of his life.

What then, gentlemen, is the ground, upon which both or either of these witnesses, can fairly be treated in this cause, as accomplices or accessaries, *before* or *after* the murders were perpetrated? I answer with confidence, there is not a pretext, founded upon the evidence, for doing them such injustice.

But, gentlemen, if, in opposition to every presumption in the case, I were to admit in its utmost latitude, the position which has been assumed, that both of these witnesses were, in truth, leagued in voluntary confederacy with the murderers, so far only as to secure the booty, and to screen them from detection; still I should have authority to say, and to predicate the assertion, upon the clearest principles of the law, that the circumstance could not, essentially impair, much less destroy, as has been contended, the credibility of their testimony. If they are accomplices, they are, nevertheless, accomplices who are testifying, in *this court*, upon very different *terms* and *conditions*, than those which are required by that musty and exploded doctrine of approvement, which has been so largely explained to you, from the books, by the gentlemen on the other side. It is surely, not in this case, as in the case of the approver, that the remuneration of his testimony, is the forgiveness or remission of his own transgressions; and, that his own life may be spared, if by any means, foul or fair, by his truths or his perjuries, he can make sure of an equal victim, by way of feeding and appeasing the vengeance of the law. Gentlemen, we have much reason to be thankful, that this vile and most mischievous course of procedure; this barbarous remnant of antiquity, was long since dismissed from the code of the nation which engendered it; and still more, that it never did, and never will, find a place in our own.

To you, gentlemen of the jury, who are men of information and intelligence, it may be superfluous to remark, that there is no branch of our government, however elevated in power, which has the prerogative to make any previous stipulation with a witness; to give any assurance of pardon or indulgence, by way of consideration for his testimony; of course, no such assurance can have been

holden out to the witnesses, on the present occasion. It is, therefore, most certain, and I have authority for saying, that they have, themselves, perfect knowledge of this fact, that their fate is as entirely unconnected with the present trial, or its results, as is yours or mine, or any other individual in this court house. What then, gentlemen, is the predicament of these witnesses? If they are accomplices, it is, nevertheless, clearly the laws of this land, that they are still competent to give testimony. There is, indeed, a sentiment, which has frequently been expressed by judges, in trials of this nature, that it would be "unsafe to convict the accused upon the uncorroborated testimony of a *single* accomplice." I admit, without hesitance, the soundness of this principle, and am entirely content, that it should prevail, and have its full force and effect in application to the cause now on trial. But it must be remembered, that this is not a case of a *single* accomplice; much less is it a case, wherein the testimony of any single *witness* is without corroboration.

Touching this subject of accomplices, there is yet another position which has been advanced by the counsel for the prisoners, to which also, I will yield my entire approbation; and would have done so, indeed, if the gentleman had even omitted to remind me of a few observations, in relation to this subject, which I had the honor to submit, at an early period of my life, to another jury, on an occasion, similar to the present. It is a position, which I agree to be correct, and which appears to be perfectly well founded in reason and common sense, that when a witness, in the course of his examination, shall have disavowed all participation in the guilt of a principal offender, and shall afterwards be proved, by other evidence than his own, to have been, in reality, an accomplice in the crime, the entire mass of the testimony, thus mixed, and contaminated with a falschood, ought, unquestionably, to be rejected.

But, gentlemen, let us consider, for a moment, if it be possible that the credibility of Onion or Samberson can suffer deterioration from the application of this principle. With reference to every known fact and circumstance in this case, I would ask, if there be the slightest ground for suspicion that these men were more deeply or intimately connected with the murderers, than they were willing, frankly and openly to avow from the stand. Were they, or either of them, voluntary agents in the horrible scenes of the 22d July? In a former part of my argument, I have already attempted to shew you, and I flatter myself I must have done so, effectually, that this is not only improbable, but scarcely within the sphere of moral possibility.

What, then, is the full amount of their offending? They were. in some measure, the partakers of the spoil. This they have avowed, *confessed* if you please, and at the same time have explained to you the motives, by which they were actuated. It is always to be remembered, moreover, as incontestible proof of the fullness of their declarations, that the only evidence of this last mentioned

circumstance has been derived, and could alone have been derived, from the voluntary confessions of these witnesses.

Admit, however, for the sake of the argument, that both these witnesses have, in reality, appeared before you on the footing of accomplices; that such is the natural and necessary conclusion, resulting from their statements; yet it must never be forgotten, that it is from their own *free*, *unsolicited*, *voluntary* declarations, that you have derived, or ever could have derived, this knowledge of their guilt. What then, gentlemen, in a legal or moral point of view, is the predicament of these witnesses, on the score of credibility? In the very fullness of their heart, they have confessed to you every fact and circumstance, which was necessary to unfold to you the whole extent of their criminality. Gentlemen, I do contend, in behalf of these men, that, in the sight of Heaven, they are, by that confession, and by the contrition of which it is the evidence, completely reestablished in all the original purity and innocence of their character. We have it, gentlemen, from much higher authority than the mere speculations of frail and fallible man, that the *confessing* and *repentant* transgressor, stands at least upon a level, in point of moral excellence, with him who hath not offended. The very thief on the cross was forgiven: indeed from the word of truth itself, it is delivered to us, that "joy shall be in Heaven over one sinner that repenteth, more than over ninety and nine just persons who need no repentance."

If then, gentlemen, you are satisfied, and it appears to me impossible that you should entertain a doubt of this fact, that Onion and Samberson have fully and honestly stated to you, the whole extent of their connexion with the prisoners, after the tragical scenes on board the vessel were closed, I repeat, with confidence, that there is nothing in the case to impeach their credibility, or to justify a suspicion, as to the truth of other parts of their statement.

But, gentlemen, the counsel for the prisoners have slightly touched upon some other grounds against the credibility of these witnesses, which I will barely notice, but will not consume the time in commenting upon minutely. Not only the matter of their testimony, but the very manner of delivering it, has been the subject of some comment and objection. With regard to both, it is sufficient that I appeal to your recollections, in reference to the mere question of their veracity. It has never been objected, that certain several discrepencies and contradictions have appeared from a comparison of these two witnesses; it is unnecessary for me to advert to the particular instances that have been mentioned. With respect to them all, it is sufficient to remark, that they relate, without an exception, to some trifling, immaterial circumstance of the cause; that they are such as are always to be expected in the course of human testimony. In fine, that they are such as only serve to shew that there can have been no concert or combination between the narrators; and, concurring as they do, most perfectly, in their respective statements of the principal facts, the circumstance alluded to, shew, that they must, necessa-

rily, have been both guided in their course by the light of truth. It is furthermore to be remembered, gentlemen, that since the first apprehension of these two witnesses, in Denmark, nearly three years ago, they have seldom, perhaps never, had an opportunity of conversing together. Here, also, they have been confined in separate apartments; they have been examined and rigorously cross questioned, here, in this court, separately, and not in the presence of each other. I appeal to you, gentlemen, under all these circumstances, if any little variances which may have appeared in their statements, ought rather to go to their discredit, than to be received as affording additional confirmation of their truth and veracity?

What, then, gentlemen, if you have confidence in the truth of these witnesses, is the substance and effect of their testimony? What is it, indeed, but the most complete and perfect confirmation of all those presumptions which had already arisen in this cause, from the statements of M'Kim and De la Roche, upon which I have heretofore had occasion to comment so largely?

You are, however, now relieved from the necessity of resting solely upon presumption; the evidence is now direct and positive, that Thomas Baynard, the person mentioned in this indictment, was most basely murdered, at the time and in the manner therein alleged; and secondly, that one and all of the prisoners, were most unquestionably concerned in the perpetration of this foul and most nefarious deed. It is my business to establish, to your entire satisfaction, by force of all the evidence which is before you, the truth of these propositions. First, then, gentlemen, is it true that Thomas Baynard, the person alluded to, is actually dead; for even this point, which in its order, stands at the very threshhold of this cause, is deemed by the counsel for the prisoners, as being not entirely exempt from its difficulties and its doubts. What, then, is the evidence, in relation to this subject? With regard to that portion of the proof which is founded on the presumptions heretofore alluded to, it cannot be necessary for me again to remark. Without the aid of inference or presumption, the fact is now established, that the body of this supposed victim was seen upon the deck of the schooner Plattsburgh, breathless, and to all appearance lifeless, on the night of that day which is mentioned in the indictment. That while lying in this situation, it was taken from the deck by two of the prisoners at the bar, Williams and Rog, and thrown into the sea. He was never afterwards seen on board the vessel; nor does it appear that, from that day to this, any man has seen or heard from him, as being alive on the face of the earth. The vessel, at the time of this occurrence, was upon the ocean, and at the distance of several hundred miles from any land. No other vessel was then in view, nor was any one seen for several days preceding or subsequent to the period alluded to. Such, gentlemen of the jury, are the circumstances, upon which the allegation is founded that this man is dead. Permit me to inquire, can there be a doubt of

the fact? It is true indeed, that the body of this sufferer was not followed to his death bed in the ocean, by either of the witnesses, who have spoken on this occasion. No one has declared to you, upon the sanctity of an oath, that he watched the process of that suffocation which is described in the indictment, or witnessed the very last gasp of the deceased. It has, therefore, been insisted by the counsel in the defence, and with a degree of earnestness that would denote their sincerity in the objection, that our evidence of the death is yet incomplete. The wide ocean must be ransacked, the dead body must have been discovered, or it would be unsafe and presumptuous to convict for the murder. Such, gentlemen, is the argument of counsel in the defence; and they have gravely opened their books of authority, and almost overwhelmed you with their precedents and their cases, in order to establish the validity of this doctrine. Gentlemen, the occasion is too solemn to admit of any pleasantries in replying to such arguments. I must, however, be permitted to remark, that if the gentlemen had undertaken to recite before you, from that well known volume, the *Castle Spectre*, or from any other of the mere tales of romance, some marvellous instances of perils and escapes, their quotations would have been quite as appropriate, and to my view, of precisely as much weight and import in the cause now on trial, as those they have cited from the folios of the law. It is to be observed, moreover, that *mere cases*, which result in no decision of *a principle*, however they may be interspersed with solemn *sayings* and *suggestions* from the bench, are altogether useless, and worse than useless, on an occasion like the present. They may serve, indeed, to inform you, that a man has been cast into the sea, *and was not drowned;* that many men have been *lost*, and *were found*, even after all reasonable hope of their existence were extinguished; but, gentlemen, they can afford you no light, and no information on the question, whether the man referred to in our indictment be *living or dead.*

But the learned counsel for the prisoners, aware of the almost insurmountable difficulties, and pressure of their case, have attempted, in the loftier flight of their imagination, to bring into exercise still more extraordinary means of stirring up *a doubt* in your minds, concerning the reality of the *death* here alleged. They have even reminded you of the *miraculous escape* of the great prophet of antiquity from the fury of the lions; and have ventured to suppose that in the instance before us, the same "preserving angel may have walked forth upon the face of the waters, and snatched a drowning man from the deep." Alas, for such examples, the age of miracles has ceased; the messengers of God do not now, as in "older time," descend from their celestial abode, to mingle in the concerns of man here below. In latter times, the laws of nature are left with us, undisturbed, and causes and effects flow on regularly, with undeviating order and certainty.

So sure, then, as that the life of *Thomas Baynard*, was not preserved by a *miracle ;* if his *body* as well as *spirit*, as, in one *memorable instance* that might be mentioned, were not literally *translated, that fatal night*, from its abiding place on earth, to another and a brighter world, so certain is the conclusion, that he is not now existing.

Presuming then, gentlemen, that the death of Thomas Baynard has been entirely established before you ; and that he was killed on the night before mentioned, I will now proceed through the remainder of the observations which I am tc submit to you, to demomstrate, as I have confidence I may do very clearly, that *one and all* of the prisoners at that bar, were his murderers.

Here, gentlemen of the jury, it must be remembered, that, virtually at least, there are now upon trial before you, not one only, but five distinct indictments. The prisoners having pleaded *severally*, each has the privilege, undoubtedly, to demand that *his* own case shall be considered upon separate and independent grounds; and it is equally clear, that by your verdict, you may convict, or acquit, one or all, according to your views of the evidence.

Hence it has become necessary, that I should present to you, in some degree, an analysis of the principal and most material evidence in the cause, in order to shew you such parts of it, as are more particularly applicable to the individual case of each of the defendants.

Having availed myself of the little leisure, which was allowed me, during the short interval since the adjournment, in selecting and arranging some of the most prominent circumstances which have appeared in the case, I am now enabled to perform this task, in a manner, which may, I hope, be clear and satisfactory. In this last stage of my observations, it would be not less tedious than useless, were I to attempt a recapitulation of all that evidence, by means of which you have been led to a knowledge of the horrible and most diabolical scenes which occurred on board the schooner Plattsburgh, on the fatal night which is referred to in the indictment. That three foul murders, attended with circumstances of most unparalleled atrocity, were actually perpetrated on that occasion, by some person or persons, belonging to the vessel, I will assume as a position, which, by this time, is placed beyond the reach of incredulity. It only remains for me, therefore, to point out to you, which I shall endeavor to do, with as much brevity as the nature, and great importance of the subject will admit, a few particular facts and circumstances in evidence, as applicable to the case of each of the prisoners separately, tending to confirm the strong presumptions of guilt, which have heretofore been considered as existing against him.

With this view, gentlemen, I shall consider the case of each individual, in the order in which they are named in the indictment.

and which, upon examination, will not, improbably, be found in conformity with their respective degrees of turpitude, or, rather, of activity, in the perpetration of these crimes.

First then, let us look at the predicament of *John Williams.* That this man was on board the vessel, on the occasion alluded to, is beyond all controversy; that he was a considerable personage on board, in point of standing and influence with the crew, would be sufficiently obvious, from what you must have remarked of his appearance and deportment at the bar, even if you were without that entire confirmation of the fact, which is afforded you, by the whole course of the evidence. To go back to the origin of his connexion with the vessel, I shall presently have occasion to remind you, that, from several circumstances in the cause, there is no small ground for the belief, that the very purpose and object of his shipment on board, was to commit the crimes of which he stands accused, and thereby to possess himself of the plunder, which unhappily, was eventually obtained.

There is, at any rate, much cause to suspect, from several circumstances in the case, that the horrible project was engendered by Stromer and Williams.

It was Williams, most certainly, as you learn, distinctly, from both Onion and Samberson, who, in the early part of this voyage, if he did not project, was, at any rate, the principal agent in attempting the execution of the hellish design, of killing, by poison. It was Williams, who, with the thongs and ropes in his bosom, would have been the executor, not, I presume, the inventor, of that wilder form of piracy, which was once in contemplation, to bind the officers, and leave them upon an island.

Above all, gentlemen, and here I must desire you to rivet your attention upon the circumstance I am about to mention; it was this same Williams, who, on the night of the massacre, according to the explicit testimony of Onion, gave out *the false alarm*, of "sail ahoi!" thereby, to bring his victims into one group upon the deck, for the obvious purpose of a more easy and convenient immolation!

It was Williams, (if you confide in Samberson,) who was one of the *two*, who were specially employed, in consigning *the wounded, and half murdered* body of Baynard, to the mercy of the waves!

Still thirsting for more blood, it was this same sanguinary monster, who, in the midst of that scene of horror, which has been described to you by the witnesses, seized Onion by the breast, "*and called to his comrades, come, kill him!*" and who, at the same moment, breathed forth his dreadful imprecations, and threatnings of death upon Samberson, as the penalty of disobedience.

It was Williams, moreover, who, in consideration, no doubt, of his superior pretensions, on account of his services and activity, in *putting aside* the lawful authority of the ship, assumed, or

was assigned to be second in command, under the newly acquired government; and, that his influence, at least, at the first moment of his achievement, may even have been superior to that of the nominal commander, Stromer himself. We have much reason to infer, from the circumstance, that it was the voice of Williams, which pronounced the decision, the ship is ours, "*We'll stick her for Norway!*"

It was Williams also, who directed and assisted in the alteration of the papers, and for the residue of the voyage, assumed the name, and caused it to be inserted, of the murdered Yeiser.

Lastly, it was Williams, who, when the "garments were parted," that had belonged to three victims, shared them with Stromer, the only man on board, whose claims to these spoils of *rapine* and *blood*, were deemed to be on an equality with his own!

Thus far, gentlemen, it will be perceived, if you remembered, minutely, the evidence in the case, that I have proceeded in my enumeration of circumstances, as applicable to this man, upon the most direct and positive testimony of Onion or Samberson; and in most instances, both; and that all I have yet stated, has reference only, to such of his acts, as happened to have occurred within the immediate sphere of their personal observation. It is, however, fit and proper, before I dismiss from my mind the consideration of the evidence, as it bears upon this ringleader of the ruffians, that I should call to your remembrance, some of his *sayings*, or rather *boastings*, subsequent to the catastrophe, in relation to the fell deeds he had achieved.

You must remember, gentlemen, I, surely, shall not forget, the circumstances which were related by Samberson, of that *horrible repast*, that *festival of death*, where all the *fiends* were gathered together, on the first morning which had yet shone upon the dark deeds of the preceding night. You will remember the course of conversation, and remark which prevailed on the occasion; when each man was amusing his comrades, with as much humor and pleasantry, as he would have shewn, in recounting his sports and his pastimes, by recitals of the hellish exploits he had so recently performed. It was a meeting indeed, resembling more a congregation of devils, than an assembly of beings wearing the form and feature of man. Gentlemen, it is to the remarks, which were made on this horrible occasion, or rather, to what fell from the unhallowed lips of Williams, in particular, (for I would not stir up your feelings of abhorrence, by a repetition of more, on this subject, than may be useful, with a view to public justice, and the merits of this cause,) that I am now desirous, for a single moment, to call your attention. With regard then, to Williams, it will be recollected, that he *boasted*, not *confessed*, that it *was he* who first levelled the captain upon the deck; and he also, who threw the body into the sea.

It is also to be noticed (though the circumstance is almost too monstrous to be endured, even in imagination,) that the compan-

ions of this ruthless savage, were regaled, on this occasion, not merely with the fact of this achievement, but with descriptions also of the piteous looks and supplications of the victim, and other horrid incidents which accompained its execution. I could remind you, also, of several other circumstances of not much less horrid aspect; such as the history he gave to his companions of his *former life and experiences;* his murders, his trials and escapes; but I forbear. Nothing surely need be added to show you the deep, unparalleled, unfathomable wickedness of this man.

I have been thus minute, gentlemen, in remarking upon the circumstances which relate only to the case of Williams; not because I could imagine that any single item, in the black catalogue which has been presented to you, would have been deemed insufficient to render certain his conviction; but because I have supposed it might be salutary, in reference to the end of all public prosecution and punishment, to exhibit the odiousness of crime, by an example almost without a parallel in judicial history.

With regard to the circumstances which have appeared in evidence, as applicable to three of the remaining prisoners, I shall be extremely brief; contenting myself, indeed, with a simple statement of the fact which I would have you consider; and leave you to make your own inference and comment.

The person, next in the indictment to Williams, and next to him in guilt also, as I have supposed, is John Peter Rog. With respect to this man, the circumstances which I have to mention are few, *comparatively* in number, but, to my view, they are pregnant with much import and signification. You will remember the circumstance which was stated to you, by Onion, as to an assemblage of the assassins which was convened in the cabin, and which the witness has denominated *a council of war*, on the night of the insurrection, when the *subject* of the deliberation was the life or death of this witness.

I pray you, also, to recollect, that *John Peter Rog* was one of these *fratricide judges*, who, in less than half an hour after three foul murders were committed upon the decks, *sat and deliberated* and *gave his voice* in the sentence which was passed on the occasion.

It was Rog also, let me remind you, who, according to the distinct declaration of Samberson, was the only assistant of Williams, in throwing overboard the body of Baynard!

You will remember, also, that it was this same Rog who boasted of having inflicted the captain's death, by an implement of his own device, probably a stone in a stocking. It was Rog, moreover, who, "skipping with exultation upon the deck, boasted of the great exploits which the "*little yankee*" had achieved." Such, gentlemen, are the mere auxiliary proofs against this prisoner, as they have been stated or corroborated by the testimony of both Samberson and Onion.

As to Frederick, the next in order upon the indictment, it must

be noted, that, according to the explicit declaration of Onion, it was this man, most particularly, whom he distinguished close behind him on the deck, at the moment of receiving the first blow upon his head, as he has described; and, except that this stroke was not fatal, have we not much reason to infer, that it was occasioned, not by the "*flapping of the boom*," as was supposed, but by no other implement than that same "*stone in the stocking*," which, in the perpetration of one other murder, this wretch was heard to boast of having employed so dextrously.

It will also be recollected, who it was, and that it was no other than Frederick, who gave the word that first led to the lurking place of Onion; and that it was *he* also, who called "*for the halliard to rouse the bugger*" from his concealment; that *he* demanded the keys of Samberson, at the very moment when the work of desolation was completed; that Frederick, moreover, was one of the judges, who sat in consultation *upon Onion's fate*, and *stood sentinel*, with *his musket*, before the bread locker, until the sentence of acquittal was pronounced!

To cap the climax of this evidence, we have authority to believe, if we can rely on the veracity of our witnesses, that this was not the first instance of *murder* and *piracy* in which he had been engaged. That in a moment of triumph and exultation at the recent victory, he had the effrontery to boast, that this was *only the fifth* enterprize of the kind, to which he had been a party.

As to Peterson, I have but little more than a single observation to submit to you; that he was on deck, and upon his watch, when the scene of blood was commenced, is manifest upon the evidence; that there is not a single circumstance of alleviation in his case, is not less apparent. This would be enough to establish the guilt of this man, as a confederate. But, alas, there is one damning circumstance in the cause, which must give to this monster, even a pre-eminence in crime, over all the rest of his vindictive associates. He, also, was a member of that infernal tribunal in the cabin, who were to adjudicate upon Onion, and *it was his voice alone*, which was in favor of his death!!

I come now, gentlemen, to the case of Nathaniel White, the last named of these defendants; and here, I will have the frankness to admit that his case is, undoubtedly, entitled to separate, and very careful consideration. It cannot be denied, that much of the evidence which has already been commented upon, and which, in every possible view, must be considered so conclusive, and so fatal in its operation upon his associates, is, in some measure, lost in its application to him. So true is this, gentlemen, that upon my first, which was, however, a very cursory view of the force and bearing of the testimony, as it was delivered in by the witnesses, at the opening of this cause, I had even entertained some portion of doubt as to his full participation in the guilt of those with whom he is associated, on this trial. Had such an impression still continued upon my mind, I do protest to you, in the most solemn manner, and in

the presence of that God, who searcheth and who knoweth, the hearts of men, that I would as soon take the station of any prisoner at that bar, as I would do aught against the life of that man.

But, gentlemen, I have since perceived, that the scruples I had entertained, were merely owing to the very limited and imperfect estimation I had formed of the weight and bearing of the evidence, at the mere opening of this cause. On further and more critical examination of that evidence, I am now entirely satisfied myself, and I think you, also, will be convinced, that there are certain circumstances in the case of this man, also, which are entirely irreconcileable with the supposition, or even the possibility of his innocence. Indeed, it does not appear to me, from several facts, which appear in the cause, that there is much ground for the supposition, that being a *sly*, *cunning* man, to use the language of one witness, especially, who has testified respecting him, he may have been, and was, in all human probability, a principal agent, and even a prompter in all the dire scenes which have been described. The first observation which I have to submit to you, in relation to this man, and his connexion with the murderers, is that throughout the whole course of the evidence of Onion and Samberson, there is not a single circumstance, (except the mere absence of *direct* and *positive* proof of his immediate agency in destroying the lives of the three victims who were slain on the fatal night.) tending to favor the supposition that he was not concerned with his comrades in the perpetration of the deed. What, then, gentlemen, let me ask, are the circumstances which stand opposed to his pretensions of innocence? Although on board the ship, a mere fore mast hand, yet from his appearance at the bar, we have authority to infer that he must have been a man of no inconsiderable *power* and *influence* with his messmates. It was *his watch on deck*, when the scene of murder commenced. Onion was *struck down*, *Samberson* was threatened; dismay and desolation were stalking abroad, on that horrible night, yet no man has said or even pretended, that the *life* or *limb* of White, was either menaced or assailed; he was as safe among the assassins, as though he had been their friend, their comrade. their brother. But, gentlemen, there are other circumstances in this case, whose import admits of no diversity of interpretation. It is stated by Samberson, that White, also, was one, who, with Frederick and others, came down to the cabin in pursuit of Onion, before he was drawn from his hiding place. He was silent, indeed, on this occasion; but his presence and apparent association with Rog and Frederick, whose visit to the cabin, at that time, was for the special purpose of dragging the fugitive, Onion, to the slaughter, is unquestionable proof of his intentional cooperation in their proceedings. I pray you, most particularly to consider, that all this occurred within less than five minutes after three foul murders had been perpetrated immediately before his eyes.

There is yet another circumstance, of much greater weight and significancy, as regards the character of White in all these transactions.

You will remember, gentlemen, it is in evidence, from the explicit statement of both Onion and Samberson, that immediately after the officers of the vessel were disposed of, and she was reduced to the possession of the mutineers, a consultation was holden in the cabin among the principal persons on board, with regard to the course which should now be pursued with the prize. It was also stated by the witnesses, that White, most certainly, was present on this occasion; and, in fact, that *he* and *Stromer* were the principal spokesmen in expressing their opinions upon the interesting subject, then under consideration *Stromer* was in favor of shaping their course for Norway; White was decidedly for *South America;* considering, no doubt, that the well known confused and distracted state of that country would afford the best chance of escape from the pursuer. Gentlemen, I submit to you, if it be not repugnant to every thing we know of human nature, and of the feelings and motives, which govern mankind, that an innocent man would or could have acted, as White did, on the occasion alluded to; that within five minutes after having been *even* a spectator of such scenes of horror as had been passing before him, he could have maintained all that serenity, and composure, and firmness, which were so strikingly exemplified in this cabin consultation? The supposition is "*'gainst nature,*" and cannot be admitted.

But, gentlemen, I hasten to bring to your recollection another circumstance, which, to my view, is a mountain of proof against this man, which it would require a miracle to remove.

Remember, gentlemen, it is distinctly in evidence, that several days after the vessel had been put upon her course for Norway, and when, no doubt, the murderers, elated with the success of their enterprize, had lost all fear of detection; a conversation took place between Onion and White, relative to the transactions which had recently occurred on board. In the course of this conversation, it is stated by the witness, that White deliberately declared to him, that he had been apprized, (or to use the language of the witness,) "he had known," for some time before its consummation, that the plan of insurrection and murder, had been formed among the crew; that he should have divulged the *circumstance* to the captain, but was afraid his own life might be endangered by the discovery.

Gentlemen, the first part of this declaration, which relates to his having had knowledge of the plot, is undoubtedly the truth; but permit me to say that the apology which is given for the concealment of that knowledge, is altogether futile and senseless. I submit to you, gentlemen that an *honest*, *innocent* man, nay, any man, not steeped in guilt, like Stromer and Williams, would have been prompt and instant, even at the imminent hazard of his life, in the disclosure of so foul and horrible a machination.

But, gentlemen, was there any ground for this pretended timidity? A moment's reflection will convince you, there could not have been; and, that White must have known it. He is a seaman, and

has probably, for many years, been engaged in that course of life. He knew the state of the ship, and the number of souls on board of her. Supposing Onion, and Samberson, and the cook, to have been strangers to the conspiracy, of which, there is proof, approaching to demonstration in the cause; and, that these three men, would of course, in case a conflict should ensue, be found arrayed on the side of their officers, it must have been seen, and well understood, by White, that there could have been, but a very inconsiderable balance, even of mere physical force, in favor of the conspirators. He was a seaman, moreover, and must have witnessed, on some occasion, the effect of that, almost magical, influence which belongs to legitimate power and authority; and which has sometimes been known to enable a single officer, in defence of his ship, to stand as a host, against a band of lawless mutineers. All this, for he has the appearance, certainly, of being a man of no inconsiderable experience and intelligence, must have been well understood by this man. He knew more, especially that all the muskets and pistols, and other implements of defence which were on board, were at all times in the custody and possession of the officers. With such views of the subject, which cannot have failed to present themselves to the mind of this *sly* and *cunning* conspirator, he must most certainly have believed, have known indeed, that had the ship been apprized of the horrors which were impending, ten minutes would not have elapsed, before he would have seen the blood hounds, subdued and in chains.

Gentlemen, permit me to inquire, what then becomes of that *frail* and *guilty* apology, which is given you by this man, for having locked up in his breast that horrible secret, whose timely disclosure would have been the means of rescueing the lives of three innocent fellow beings, and possibly the souls of those, who now stand with him at the bar? To my view, gentlemen, every word of this *unguarded confession*, made by White, seems written in blood. Indeed, this single circumstance, were it standing in this cause, independent of all others and alone, I consider not only strong, but absolutely conclusive of his guilt; as much so, indeed, as though his deliberate confession of the crime charged against him were found recorded before an hundred magistrates.

Gentlemen, I have already detained you much too long, on this occasion, and will immediately conclude my remarks.

In a public point of view, as well as in relation to the miserable men at the bar, the cause you are to decide is most interesting and important. I have only to hope, that in forming your opinion upon it, you may be guided by the light of reason and truth.

I am aware, gentlemen, that it is a most piteous spectacle, a sad and sorry sight, to behold such *a group* of your fellow men, standing at the bar of justice on trial for their lives; standing, as it were, on the very brink of eternity, and appealing *to you* for deliverance from the dreadful abyss which is yawning to receive them. You have a painful, a fearful duty to perform; and it is doubtless your intention

to fulfil it with fortitude and firmness. Still I must remember, that you are but men, endued, as I know, with a full portion of all those sympathies and sensibilities, which constitute the more amiable, and better part of our nature. It is not, therefore, unnatural to suppose, indeed, it would be injustice to you, to suppose it otherwise, that during the progress of the trial, and while the pitiable objects, upon whose doom you are to pronounce, are immediately before your eyes, to feel an inclination, for the moment, at least, to overlook their malefactions, and to indulge yourselves in emotions of pity for their sufferings and dangers.

It is, however, my duty to remind you, that however innocent it may be, to give indulgence to more momentary sensations of this nature, while the pathetic appeals which have been made to you, in behalf of these men are yet ringing in your ears, and inclining your hearts to unmerited clemency and forgiveness, it would be in the highest degree improper, I had almost said, impious, were you to permit any such feelings to mingle in your deliberations, when you shall have retired from your seats; when you shall come to pronounce upon the sanctity of your oaths, on the question of innocence or guilt. It is proper for me, also, to remind you, that if it were fit, that your deliberations should be influenced in any measure by your sensibilities on the present occasion, there are other objects which have been brought to your view, on this occasion, besides the prisoners at the bar, that are calculated to call forth those sensibilities. The dead, as well as the living, have some claim to your recollections. May we not, indeed, imagine, that the shades of the victims, who thus, "untimely and unprepared, were sent to their great account," on the fatal night which has been mentioned, yet hover o'er the deep, wherein their bodies were plunged, and call for vengeance on the heads of those foul and inhuman murderers!

Gentlemen, the murder which is charged upon these prisoners, is not, as you have perceived, of any common and ordinary character. Not one individual, only, but three innocent and valuable men, and members of society, have, in one fell moment, fallen by the hand of ruthless and vindictive monsters. Even in such a case, however, it is very far from my desire to stir up within you, any feeling of abhorrence and indignation that might tend to produce any improper bias on your judgment. But in such a case, surely, every administrator of the laws ought to be indulged in the strongest terms that can be used, in a demand of public justice.

Judge Story then addressed the Jury. We regret that it is in our power to give only a sketch of his very able Charge.

Gentlemen of the Jury,

IF your feelings have been like mine, in the investigation of this solemn and important cause, you will find relief in the consideration, that our arduous duties are approaching to an end. It is in vain for us to endeavor to conceal from ourselves, that we are men,

and liable to be influenced by the eloquence of counsel, in a case like the present. But it is our duty, Gentlemen, to guard ourselves against being carried away by our feelings. The task we have to perform is a painful one, but our obligations to society and to our consciences, forbid us to shrink from its performance. We must endeavor to dismiss from our minds every impression, which has a tendency to lead us away from an impartial consideration of the law and the evidence.

The prisoners at the bar, Gentlemen, are indicted for piratically and feloniously, wilfully and with malice aforethought, taking away the life of Thomas Baynard, upon the high seas, on the twenty-second day of July, 1816. The indictment contains two counts; the first one alleges that the death was caused by drowning; the second, that it was caused by blows and subsequent drowning. It is unnecessary for you to pay any particular attention to this distinction. The proper question for you to determine, is whether Baynard came to his death by drowning, substantially as stated in the indictment. There is however a preliminary question, relating to the place of the transaction and the jurisdiction of this Court; but it is conceded by the prisoners' counsel, that if the murder was committed at all, it was committed on the high seas, and that the prisoners were first brought into this district.—It follows of course that this Court, under these circumstances, has jurisdiction in the cause.

The first question for you to determine, is whether a murder has in fact been committed; you will then consider whether all, or any, and which, of the prisoners, were concerned in the perpetration of it. In the opening and throughout the whole of the defence, frequent allusion has been made to the imperfection of human testimony. It is indeed true that human testimony is not infallible. False evidence is often given, sometimes through mistake, sometimes from corrupt motives; still, human testimony is almost the only means we have of coming to a knowledge of facts; and the man who instructs you not to believe it, instructs you not to belive any thing. A number of cases have been read to you, in which, by an extraordinary combination of circumstances, innocent persons have been convicted of murder and executed. Whether these cases be true, or fictitious, we know not. But we are not to decide upon the justice of the decisions in these cases; we are to confine ourselves to the case before us.

The facts have been so distinctly laid before you, that I shall confine myself to a very brief review of them.

It is clearly proved, that the schooner Plattsburgh, in the latter part of June, 1816, was owned by Isaac M'Kim, a citizen of the United States, residing at Baltimore—was there laden with a valuable cargo of coffee, and upwards of forty thousand dollars in money—and sailed from that port, on the first part of July, for Smyrna—that William Hackett was master, Frederick I. Yeiser first mate, Stephen B. Onion second mate, and Thomas Baynard supercargo; and that she was manned with a crew of fourteen men.

five of whom were the prisoners at the bar. It is in evidence, that when she arrived off Cape Henry, a day or two after she sailed, there was a slight disturbance among the crew; but nothing material took place until the 21st of July, when she was near the Island of St. Mary. And here, if the witnesses are to be believed, a transaction took place, as horrible and as bloody, as ever was laid open in a court of justice. It appears that at 12 o'clock this day the vessel arrived off St. Mary's, and from the rate of her sailing, must have passed that Island about a hundred miles when the occurrence happened. The crew were divided into two watches. The chief mate's watch was from 8 o'clock in the evening until 12. To this watch belonged White, one of the prisoners. And in the watch of the second mate, which did duty from 12 to 4, were Williams and Frederick, two more of the prisoners. When the hour arrived for relieving the first watch, Onion the second mate was called. When he went on deck, he heard Williams cry out "a sail, ho!" He asked where the sail was; Frederick said if he would go forward he would shew it to him. He followed Frederick to the bow of the vessel, and there met the first mate, and while looking over the bow together, they each received a blow on the head which brought them down on the deck. Onion at first thought the blow was from the foot of the jib. While attempting to raise himself on his hands and knees, and "scuffling to windward," Williams caught him by the breast and called out, "here is one of the damned rascals, lend me a hand to kill him;" at the same time he heard the first mate cry murder. He received a blow, from some person behind him, on his left arm, by which he was much injured. He then heard the captain call out, "what is the matter forward," and those who were about Onion, immediately left him, and sprang towards the captain. Onion then got up and made for the companion way, passing by a man with an axe in his hand. He rushed into the cabin, seized a bottle of whiskey that was by, and threw himself into the bread locker. In the cabin, he saw the supercargo rubbing his eyes, having just got up. The steward, Samberson, was then lying in his birth. After he was in the locker, he heard them call from the deck to the supercargo to come up. The supercargo said, "let me first put on my clothes;" they answered, "no, no, the captain wants you forward." He then heard a scuffle on the deck. Immediately after this the steward was called up, and was forcibly dragged upon the deck. The steward was ordered to go forward. He went, and looking under the main boom, he saw the supercargo lying stretched at his full length, and then saw Rog and Williams take him up and throw him overboard, and heard him shriek, after he was in the water:—And since then he has never been seen nor heard of. All this took place at the hour of midnight, when the heavens were shrouded in darkness, and the vessel at the distance of a hundred miles from any land. No sail was in fact in sight at the time, and without doubt, the cry of a sail was only a part of the machinery employed, the better to effect the horrid purpose of the murderers.

The counsel for the prisoner contend to you, that there is no evidence of the actual death of Baynard, that it is still possible he may have been saved, by some miraculous interposition, from the devouring waves to which they had committed him. But by what spirit of the deep was he protected? to what region has he been conveyed? He has gone, Gentlemen, you will think, I believe, to that region, towards which we are all of us advancing. If you are satisfied with the truth of the evidence presented to you, it is impossible for you to indulge the least doubt on the point of his actual death. In no case can you arrive, perhaps, at absolute certainty of the death of an individual. There always remains some ground for the conjectures of the doubting. They may say that your own senses are not always sufficient to satisfy you. Should you even see a man laid out in his coffin, you may yet call to mind, that there have been instances of resuscitation, which have contradicted the tenor of human experience. But we must act as reasonable men on reasonable evidence: and in this case, *that* can leave no doubt that Baynard is dead. I now proceed to the further circumstances of the case.

After the perpetration of these foul murders, Williams ordered them to "bear a hand," crying out, "the ship is ours." The steward was then permitted to go below, and at the same time Williams, Frederick, Rog, and White, repaired to the cabin for the purpose of seeking Onion. Some one asked if Onion was not overboard with the rest; Frederick said no, "he knew where he was," and called for a top-sail brace, as he said, to "rouze the damned rascal out." They then held a consultation, to determine whether they should throw Onion overboard, or permit him to live. Some advised to the one course, and some to the other. Frederick said, "he is a clever fellow, and will join us, and take a share of the money with us—let him live;" but Peterson cried out, "Damn him, he is one of the officers, let him go overboard as well as the rest." To this Williams replied, with a degree of humanity but little consistent with the rest of his conduct, "No, no, we have already spilled innocent blood enough; let him live." White was present at this consultation, if Samberson speaks the truth; but he said nothing. They then called to Onion, to come out, and gave him some spirit, and appeared to amuse themselves with his terrors; and left him in the cabin for the remainder of the night. It was now agreed, that Stromer should act in the capacity of captain, Williams of chief mate, and that Onion should continue in his former situation of second mate. Nothing was said about the former captain or mate until the next morning. At 4 o'clock in the morning, Stromer and White came down to drink grog together. White asked Stromer where he meant to carry the vessel, and proposed to carry her to Brazil. Stromer replied that he should carry her to Norway; and said that he could there conceal her among the rocks and smuggle the cargo on shore. The cook was ordered to get breakfast early the next morning. Williams, Stromer, and Onion breakfasted together, and were tended by the steward. The conversation turned

upon the events of the preceding night, and Williams, who bore a principal part in it, said that when he had hold of the captain and was about to throw him overboard, the captain cried out to him, "don't you know me, Bill?" and he answered, "yes, you damned rascal, I know you well, to my sorrow;" and their conversation was in a strain of exultation, as if they had accomplished all their purposes. Williams spoke of having had a quarrel with the captain on a former voyage, in which the captain threatened to shoot him, and Williams, throwing open his waistcoat, dared him to do it, but said that if he missed him, the captain's life would pay for it; and that in consequence of this occurrence, he had always since retained a grudge against the captain. He also stated, that he and Stromer had formed a plan for poisoning the officers, by putting poison into their coffee, and that they failed in it, by his having been called by the mate, as he was attempting to throw it in. The truth of this acknowledgment is proved to you, Gentlemen, by the circumstance, that the captain and supercargo were made so unwell by the coffee, that morning, as to be compelled to take medicine. After breakfast, a division was made of the money. It appears that White passed it up from below; it was divided, by the means of hats and a tin pot, into equal portions, and each of the crew, including Samberson and Onion, were called upon to take their respective shares. Onion says, that he at first declined, telling them, that he was satisfied with having received his life, and did not want a share of the money, but he was ordered to take it; which he then did, and placed it in an open trunk in the cabin without counting it. Samberson states, however, that he did not recollect that Onion hesitated to receive it in the first instance. This however does not necessarily prove a contradiction in their evidence. Onion afterwards, to avoid suspicion, counted his money, and found that it amounted to about three thousand dollars. And here several conversations may be mentioned, which are testified to have taken place between different individuals of the crew, at various times, in the course of the voyage to Norway. It is testified by Onion, that, in a conversation between Smith and Peterson, Peterson said that the captain "caught hold of his jacket and like to have had him overboard;" and Smith said "the captain also caught him and had got him half way over the rail, and like to have served him in the same way." At another time, Peterson, talking with Smith and Johnson, said that the mate, in going overboard, caught hold of the guy of the flying-jib-boom, and they had to cut it off; and Onion saw blood the next day near the guy, and heard Frederick say, that he had cut his thumb there; so that it would appear from this, that Peterson and Frederick had the principal hand in throwing over the mate. It is also stated to you, that Williams told Onion, that he and Frederick, at eight o'clock in the evening, had entered into an agreement, and shaken hands upon it, that they would take the vessel from the captain, on the night when this transaction took place, or jump over-board; and that they had, previous to this, formed a plan to seize the officers at noon, on the same day,

whilst they were taking the sun, and send them off in the boat to St. Mary's, but that their hearts failed them. This would indeed have been a merciful course, and it is deeply to be regretted that they did not succeed in it; they would thus have saved the lives of the three unfortunate beings who were subsequently destroyed. Samberson states to you, that Rog, who went by the name of the *Yankee Boy*, the day after the death of Baynard, jumped about the deck and cried out in exultation, "you now see what a yankee boy can do." And he at the same time boasted that he struck the supercargo on the head with a stone tied up in a stocking, and knocked him down on the deck. Williams also said, at another time, that he had committed three murders before;—that he had killed a man in South America, and a woman in some other place, but had escaped punishment; and Frederick stated that this was the fifth time *he* had been engaged in the like transaction.

After the fatal transactions of the 2d, the vessel made her course for Norway. She was carried into Cleveland, a small place containing about 60 houses, near Mandahl, where the crew employed themselves in smuggling the cargo. Onion testifies that he went on shore but once during that time, and was then narrowly watched by Williams. Samberson was permitted to go on shore frequently, and he attempted to get an interview with the consul, as he says, in order to make a disclosure; but as the consul was not in town, he was unable to effect it. On, or before her arrival in Norway, an alteration was made in the ship's papers. The cargo, instead of being consigned to Smyrna, now purported to be consigned to Myers & Co. at Hamburgh; many of the leaves of the log book were cut out, and the log book headed, "From Baltimore to Bremen." After staying here five days, Williams, Onion and Samberson took passage to Copenhagen. Williams and Onion there took lodgings in the same house. They refused to permit Samberson to live with them, on account of his colour. About fourteen days after their arrival at Copenhagen, Samberson accidentally met Rog, who appeared desirous to avoid him; but he made himself known, and went with him to his lodgings. Onion, it appears, made no voluntary disclosure, until he was carried before the police; and assigns as his reasons, that he was almost constantly in a state of intoxication, and was a stranger, ignorant of the laws of the country, and apprehensive that he might subject himself to punishment as well as the others. Williams and Onion, fearing that it might be dangerous to continue here longer, purchased a quantity of sugar and rum, with a design of going to Christiana to dispose of it, and procuring a vessel to carry them from thence to America. Meanwhile Samberson was called before the police, and there made a full disclosure. In consequence of which, Williams and Onion, who were upon the point of quitting Copenhagen, were arrested upon going to the consul's to get their pass, and immediately after, Rog was taken up. Mr. De la Roche, whom you have seen on the stand, was despatched by Mr. M'Kim, the owner of the vessel and cargo, in a short

time after intelligence was received of the mutiny, to bring home the schooner and such part of the property as he might be able to recover. He accordingly went to Christiansand, and there recovered the vessel, and returned with her to Baltimore.

Such, gentlemen, are the outlines of the material facts disclosed in the testimony which has been produced in the cause before you. If these facts are true, they present one of the most bloody and horrible transactions ever recorded in the annals of crime. And what reason have we, gentlemen, to think they are not true? You have it proved, beyond the possibility of doubt, that the vessel sailed from Baltimore with a valuable cargo, bound to Smyrna—that Hackett the captain, Yeiser the chief mate, and Baynard the supercargo, were on board—that she never reached Smyrna, but was carried into Norway—that her cargo was there sold, or otherwise disposed of—and that the captain, chief mate, and supercargo, have never since been heard of. There can be no doubt that some persons, either the officers, or the crew, ran away with the vessel. What evidence have we that the officers abused the confidence reposed in them by their employer? they have never been heard of—not one of them. The crew have not told us where they now are. We cannot trace them; and yet we have been able to follow all the crew, dispersed as they have been in the different regions of the world. The cargo is found in the possession of the crew—the clothes of the officers are found distributed among them. Even though we disbelieve the witnesses, Onion and Samberson—throw their testimony out of the case—with these facts clearly proved, it is very difficult to say that the *crew* did not run away with the vessel; and there can be as little doubt that the officers were put out of the way by some of them. It is your duty, Gentlemen, and your privilege, to judge of the evidence, but it is undoubtedly proper for the Court, who must necessarily have much more experience in the investigation of facts, to assist your deliberations by placing it before you in different points of view. You are told by the counsel for the prisoners, that Onion and Samberson are not to be believed, because they are accomplices;—an accomplice is a person who is convicted as such, or who confesses his own guilt, and receives a promise of pardon, on condition that he will disclose all the circumstances, in order to convict his fellows in the perpetration of the crime. These witnesses do not come under this description; they have received no promise of pardon—they deny their participation in the crime for which the prisoners are indicted. They are competent witnesses, and their credit is to be weighed by you like that of other witnesses. And even if they had been accomplices, acknowledging their own guilt, the law would not deem them incredible; on the contrary, on the evidence of an accomplice, if believed, the law justifies a jury in founding a conviction;—but, if the testimony of these men be true, they are not accomplices. But, it is also said, if these men were not accomplices, they would have informed against the crew, immediately on their arrival in port. Gentlemen, you must take

into consideration all the circumstances.—Cleveland is a small place; Onion went on shore but once—he tells you he was intoxicated, and deranged in his mind.—Samberson, though frequently on shore, says that he could not have a free communication with the consul—they were two only against a great number of desperate men—the rest of the crew might have out-sworn them and got them put in prison themselves, or have destroyed them. These motives might operate during their stay in Norway. At Copenhagen, the mate says he was intoxicated, and did not know what he was about. Both he and Samberson were strangers there, unacquainted with the laws, and they might apprehend personal inconvenience from making a discovery. The counsel say likewise, that Onion took one oath on board the vessel, which he has broken, and therefore would be likely to disregard another. Who would refuse, Gentlemen, to take such an oath under such circumstances, to preserve his life? And who would hesitate to break it, when his life was out of danger, and violated justice demanded his testimony? The sharing in the plunder is to be considered a part of the same transaction; it was by compulsion, or under the dread of being put to death. Another objection is, that the testimony of Onion does not agree with that of Samberson. Contradictions no doubt diminish, but they do not necessarily destroy the credibility of a witness. They may be immaterial, or arise by honest mistake or forgetfulness. You must take into view all the circumstances. The most material contradiction pointed out, that now occurs to me, relates to the mate's taking his share of the money with reluctance. But this, in fact, is not a contradiction. Samberson says only, that he does not recollect that Onion shewed reluctance. Another instance respects Samberson's having never heard White express compunction, or sorrow, for the proceedings of the crew. Here again, there is no positive contradiction. Samberson may not have heard the conversation;—it is not even suggested that he was present at it; White would not be likely to converse with a man of colour. Onion likewise does not recollect seeing White at the consultation; which Samberson says was the case. But, from Onion's situation, this might well be, and yet White might have been there, and been seen by Samberson. If the story of these witnesses were intended to be all a perjury, one would expect that they would have seen every thing very particularly; but, on the contrary, they have spoken guardedly and cautiously. They have given their testimony in your presence, and in the presence of the prisoners, and you will judge, from the manner, what credit is due to it. You will also consider whether these men, in the situation in which they were, could have acted otherwise than they did.

It is the duty of the court, Gentlemen, to state the law to the jury. We are not unmindful of our great responsibility, and we are willing to bear it. All persons, Gentlemen, who are concerned in a conspiracy to commit murder, or any other felony, whether they are present, perpetrating the crime, or acting or counselling at

the perpetration, or whether they stand by, acting another part in aid of the general design, are deemed in law equally guilty. And, frequently, the immediate actor of the deed, has less moral turpitude than the secret instigator. For instance, suppose one man gives poison to another, to administer to a third; and the second does so, not knowing it is poison: common sense tells you that the first one is the guilty person. In the present cause, if the prisoners at the bar had all agreed to murder Baynard, whether they were all present at the time of his murder, and gave the blows, or assistant in throwing him overboard, or some of them were acting in aid of the general design, in another part of the ship, at the time when he was thrown overboard, they are all deemed, in law, guilty of the crime. So, if they had all conspired feloniously to run away with the vessel, without intending to shed his blood, and in the prosecution of that design Baynard came to his death, they are all equally guilty of murder. For, where the design is to commit a felony, and death happens in the prosecution of it, it is murder in all the confederates who carry it into effect, although the death happen collaterally, or beside the principal design; but, if it is within the scope of the design to accomplish the felony by the death of any opposing parties, it is, *a fortiori*, murder, in all who co-operate in the design, and aid in its execution.

In the present case, Gentlemen, it is beyond a question, that a felony and piracy was intended to be committed, and that some of the crew had formed a confederacy for that purpose. Let us now, for a moment, consider the evidence as it respects the prisoners severally. It is testified by Onion, that *Williams* was on deck, and cried out a sail, when no sail was in sight; Samberson says, that he assisted one of the men, who he thinks was Rog, in throwing Baynard overboard; and both agree, in representing him to have been one of the most active persons in the proceedings of the 22d of July. *Rog*, Samberson tells you, was on deck, and boasted, a day or two after, that he struck Baynard on the head with a stone in a stocking—Samberson thinks he saw him throwing Baynard overboard. It is testified of *Frederick* and *Peterson*, that they were on deck, and bore an atrocious part in the transactions; that they acted together, in throwing the chief mate overboard, and that Peterson also assisted in throwing the captain overboard; and that they were present, and expressed their opinions, in the consultation respecting the second mate, the one being in favor of his death, and the other of his life.

These four, Williams, Rog, Frederick and Peterson, were there, visibly engaged in the scene of action, as avowed confederates;—and, if the witnesses are to be believed, there can be no doubt that they were all equally guilty of the murder of Baynard. Let us examine, now, the case of White, which, in some particulars, is different from that of the others. It is said by Samberson, that White was on deck when the mutiny took place, and assisted, soon after, in the management of the vessel—that he was present, but not doing any thing, when Baynard was thrown overboard—that he went

down into the cabin soon after, to drink grog—that he was present at the consultation about Onion, laughing and talking with the others. This last fact Onion does not recollect. I have told you, Gentlemen, that if it should appear to you, that any of the prisoners was a confederate in the plan to commit the murder, and aided in it, that he is guilty of the murder, even though another person inflicted the fatal blow, or threw the party overboard. In regard to White, what grounds have we to believe, that he was not confederate? It is your duty to consider all the circumstances and weigh them deliberately. In the first place, he was in the ship on the high seas, and therefore could not run away, if he wished to do so. He certainly is not guilty of a crime in being on board. He might also assume a behaviour, which did not belong to him, in order to save his life at this critical period. Another circumstance in his favour, is the observation he afterwards made, which was drawn out of the witness by a question put by the Court, that he was innocent of the murder, and would never be concerned in the shedding of a man's blood, for the sake of money. These circumstances are peculiar to White's case, and if the evidence rested here, it would be difficult to adjudge him guilty of an offence, which would make him forfeit his life. Against this evidence, you have the following circumstances.—If you believe Samberson, White said he knew *of the plan to take the ship, previous to its being put in execution, and would not tell of it.* This is an exceedingly strong fact against him. At twelve o'clock on the 21st, the vessel was under the government of her proper officers—there were six persons, at least, in the confidence of the captain, who might have secured the rest, had White revealed the conspiracy. Soon after the disturbance on deck, he was down in the cabin, talking and laughing. Is this a sign that he did not participate in the confederacy? you have heard the testimony about his slyness; you will give to it such weight as it deserves. If you believe him to have been a confederate, acting his part in the general design, you are not to acquit him, because his crime may seem to be less heinous, in a moral view, than that of the other prisoners.

I have stated the case to you strongly, Gentlemen,—it is my duty to do so. The situation of our country demands it. Piracy has become a common crime on the ocean and is daily increasing:—when murder stalks abroad unpunished, it encourages the vindictive passions of men to break out into acts of violence, endangers the public safety, and brings into contempt the administration of public justice. You will not suffer yourselves to be influenced, Gentlemen, by any feelings of compassion. The prerogative of mercy is not lodged with us.—It is in other hands. If according to the law and the evidence, the prisoners are guilty of the crime set forth in the indictment, you are bound to find them so—you have no discretion. And let me remark, that it is a false idea of mercy, to suppose it consists in sparing the guilty; such mercy is cruelty to your fellow men, and to your country. It is your province, Gentlemen, to judge of the evidence submitted to you, and let your

verdict be such as your duty demands, and your consciences will approve.

After the cause was committed to the jury, the Court was adjourned for about an hour, until 4 o'clock in the afternoon, at which time, upon the opening of the Court, the jury gave their VERDICT, that John Williams, John P. Rog, Francis Frederick, and Nils Peterson, *alias* Nils Peterson Fogelgren, are GUILTY; and that Nathaniel White, *alias* Nathaniel White Glass, is NOT GUILTY.

The Court was then adjourned until the next morning at nine o'clock.

WEDNESDAY, DEC. 30.

At nine o'clock, John Williams, John P. Rog, Francis Frederick, and Nils Peterson, *alias* Nils Peterson Fogelgren, were brought into court, and set to the bar.

Immediately after the opening of the court, the DISTRICT ATTORNEY stated to the court, that the prisoners at the bar had been indicted, by the Grand Jury for the District of Massachusetts, for the murder of Thomas Baynard, on the 22d July, 1816, upon the high seas—that they had pleaded, severally, Not Guilty—that they were first brought into this district, after the commission of the crime alleged—that they had been tried, by an impartial Petit Jury of their country, and had been assisted, in their defence, by able and eloquent counsel, assigned them by the court—that the jury had returned a verdict, that they are, severally, guilty of the crime laid in the indictment—and that the punishment of that crime, by our laws, is death.

He then moved the court to pass sentence upon the prisoners.

The court then asked the prisoners, severally, if they had any reasons to offer, why sentence should not be passed upon them.

Williams then addressed the court in a desultory speech, in broken English, but, in general, intelligible, with something of that rude eloquence, which we often find in men of uncultivated minds, when under powerful excitement. We do not pretend to follow his words exactly, in our report of it.

JOHN WILLIAMS.

Gentlemen,

I was born in Chazy, in the state of Vermont, about thirteen miles from Plattsburgh, of respectable parents. I passed nine years of my youth at the college of Montreal. At the end of this period I returned to my father's. As he was not a man of large property, he told me I must do something to get my living. I accordingly entered, as an attorney's clerk, with Mr. Ross, a lawyer at Montreal. It was not long, before I got tired of this business, and I made up my mind to follow the seas. I made one voyage with Capt. Hackett, before I sailed with him in the schooner Plattsburgh. He was a haughty and tyrannical man, and in the course of the voyage, we had a quarrel together. Capt. Hackett was very angry, and threatened to shoot me with a pistol he had in his hand. I

opened my bosom, and said, "shoot; but if you miss me, I'll be damned if I miss you." I was unwilling, after this, to go a second voyage with him; but he told me Daniel Went was going in the Plattsburgh, who had been an old shipmate of mine, and so, for company's sake, I agreed to enter on board the Plattsburgh.

We sailed from Baltimore on the first day of July, 1816, for Smyrna, with a cargo of coffee, and about $40,000. We had some difficulties in the beginning of the voyage; and Capt. Hackett's behavior was such, that some of the crew said they could stand it no longer. On the 19th, Stromer told me of a plan they had formed, to throw the captain, supercargo, and two mates, overboard. He said he had been a captain of a vessel five years out of New York, and four years out of England, and he could navigate our vessel to any port where we should choose to take her. He wanted me to join them, but I told him I would not; he then called me a coward; I told him, "no, I was as good a man as ever stepped in his shoes." On the 20th, Stromer told me they had changed the plan; he said, he knew we should soon be off St. Mary's; and they intended to bind the officers, all except one, and put them in the boat, and to put the one, that was not bound, into the boat last, that he might untie the others, and so, let them make the best of their way to St. Mary's. But Stromer afterwards thought he should not have time to escape the danger of pursuit, and this plan failed. Stromer then returned to his former plan, and asked me, on the evening of the 20th, if it should be put in execution that night; I said to him, "do not say any thing more to me about it; I see you want to be the downfall of me: if you say any thing more to me, I will strike you—and I will go further." On the 21st we passed St. Mary's. The whole of these transactions were to be dropped, and nothing was to be done. On the same night, about half past 12, I heard a man from forward cry out, "a sail forward." Not knowing that these transactions were to take place, I passed the word to Mr. Onion. The two mates jumped forward, and I went forward to see if there was a sail. I then heard Stromer say, "strike the damned rascals." Both the mates were knocked down. Stromer, and some others, immediately threw Yeiser overboard. Mr. Onion was struck with an axe by Raineaux, and I being near on the starboard side, without any weapon, went to help Mr. Onion up, without any thought of hurting him. After the vessel was in the possession of the crew, Stromer said, "well, Williams, we have done without you." Stromer told me I must be his mate; I said I would not. The crew voted that I should be, and then I accepted the appointment. When they talked of killing Mr. Onion, I said, "for God's sake, Stromer, do not shed any more innocent blood." Mr. Onion was drunk when he came out of the locker; and he drank some spirit after he came out, and was not at all frightened. He was very much given to liquor. Mr. Onion told me I had saved his life. He asked why they did not tell him they were going to take the vessel; he said, he would have joined in the plan with all his heart.

And he said he would shew them where the money was; which he did. And he took an axe and broke open the boxes of money himself. There were 19 bags in the boxes, and each person took a bag, and the remaining bags were emptied into a trunk, and the money measured in a tin pot. Mr. Onion took his share without any reluctance. Mr. Onion helped too in bringing up the money; and this is the lame arm that he could not use for a fortnight! Mr. Onion shewed me how to keep the log-book. He altered the letters; and he did duty during the whole passage as second mate. I am wholly innocent of the murder of Mr. Baynard, and of any other murder. I gave Mr. Onion an account of some murders, committed in places where I had been, and he has laid them upon me; which is all false. I have a free heart, and I speak the truth, the same as if I were going to die the next minute. So far from being guilty of murder, I have saved the lives of two persons, and Mr. Onion is one. After the vessel was taken, we went to Cleveland, a place one or two miles from Mandahl. Stromer went on shore, and made an agreement for the sale of some part of the coffee, and he said it was to be smuggled; and told me to be ready to deliver it, when a boat should come along side between 12 and 1 o'clock at night. At that time a boat came, with a letter from Mr. Stromer to deliver 56 bags. Mr. Onion helped in getting it upon deck. There were two custom house officers on board; but we treated them civilly, and made them drunk, and got them asleep, so that we loaded the boat without interruption. The next day, Stromer told me, he had sold all the cargo, and gave me the same orders as before. The last day at Cleveland, Capt. Tisland came on board, with police officers, and said they had orders to carry the vessel to Mandahl, along side the American consul's wharf. I objected, and told them the captain was on shore, and I could not let the vessel go without his orders; but they obliged me to submit. Mr. Onion then became alarmed, and asked me what was to be done; and he proposed taking passage to Copenhagen, which we agreed upon. Samberson went with us. On the passage, the captain told us he was afraid to land us, because we had not, either of us, any pass; and we agreed to say, that I had them all to keep, and lost them. So, when we got to Copenhagen, we went to the police office, and told the police officers how it was, and they treated us politely, and said there was nothing out of the way. They said something about fining us thirty dollars, for losing our passes; but they said, as we were Americans, they would not insist upon it. We then went to board with a Captain Nelson. Mr. Onion said he was too proud to live with a damned negro, and Samberson went somewhere else to live. Onion had lost his protection, and asked me, on the passage to Copenhagen, to let him have Mr. Yeiser's; which I gave him, and he passed under Mr. Yeiser's name, at Copenhagen. On the second day at Copenhagen, we went to Mr. Sabie, the American Consul, and told him we were Americans; he asked us for our protections, and said, he could not look at them at that moment, and we left them with him. After several days, Mr. Omon says, "Williams, we must be off as soon as possible." I told

him I had been looking out for a vessel for England, but could not find any. The next day, I told him I had agreed to freight a small vessel, and clear out for Norway, but intending to go to England. Mr. Onion agreed to join with me. We made a bargain with Captain Nelson, to put the worth of two thousand dollars on board, on freight; and we were to give him 3000 rix dollars to land us in England. Every thing was got ready, and we went to the consul's, to get our protections again. The consul told us, that we were there described as sailors. We answered, that we had been sailors, but that we had changed our profession. He then gave us a letter, which he said we must carry to the police office, because we were Americans. Our protections, he said, were inside. We went to the police office, and they first took Mr. Onion into a room, and examined him, and then they took me, and examined me; and they told me, my story and my partner's did not agree. The consul, in his letter, told the police to arrest us. Samberson was not at the police office, at this time. Mr. Onion and myself were kept in separate rooms. The next morning, we were examined again, and Samberson was there; and the police officers told us all these transactions; and by that reason, I knew that Samberson had turned State's evidence.

Gentlemen, I am not guilty of murdering Mr. Baynard. I have a free heart, and I shall go to my death with a clear conscience.

John P. Rog said he was a Dane, and declined speaking, on account of his imperfect knowledge of the English language.

Francis Frederick spoke some time, and gave an account of this, and former voyages, which he had sailed; and protested his innocence of the murder of Baynard. He is an Italian, and spoke very bad English, so that it was difficult to understand him.

Nils Peterson protested his own innocence, and charged Williams, Rog, and Frederick with throwing Baynard overboard. He denied making the speech, which Onion attributed to him, at the consultation about taking Onion's life away, viz.: "Damn him, he is one of the officers, let him go overboard with the rest."

The Court then addressed the prisoners, nearly as follows:—

Prisoners at the Bar,

The court have listened, with patient attention, to the statements, which you have made with a view to vindicate yourselves, and shew why you should not be adjudged to suffer the punishment, annexed by the law, to the crime of which you stand convicted. Your observations can avail you nothing; you have offered no sufficient reason for checking the usual course of justice. It is impossible for us to believe your stories; they are inconsistent with each other, and therefore cannot be all true; but were they consistent with each other, and were it in our power to lend an ear to them, by your own shewing you are guilty of piracy: by the laws of this country, however, your own word cannot be taken as evidence in your favor. The judgment which the law requires me to pronounce, cannot be arrested or delayed, unless you assign some legal reason; the court has no direction to suspend your sentence or mitigate its severity.

Prisoners, it is a solemn, it is a painful duty, to pass a sentence, which in all probability will deprive four fellow-beings of their lives; and no small degree of firmness is required, to do it in such a manner, that it may conduce to your benefit. Impress on your minds, I entreat you, the awfulness of your situation, and turn your thoughts to Heaven. Think upon the crime you have committed; which is of so gross a nature, that in all nations the punishment of it is death. Commerce, and the safety of society, demand that pirates, whenever they are found, should receive the recompense of their guilt. They are considered the enemies of the human race; their hand is against every man, and as a natural consequence, every man's hand is against them. Even by the confessions, which have found their way into the narrative you have just now given of these horrible transactions, you have shewn yourselves guilty of piracy. Would to God! this had been the extent of your guilt.—The crime, of which you have been convicted, is of a deeper die; you have deliberately murdered an innocent man. This is a crime which is not created by society; it receives its sanction from a higher source; "whoso sheddeth man's blood, by man shall his blood be shed." There is no doubt, but that you were guilty of the murder, and under circumstances, the most bloody and atrocious. One victim would not have answered your purposes; three innocent persons, plunged in the sullen waves, were hardly sufficient to satiate your cruelty. In the midst of these barbarities, however, your hands reeking with blood, you paused. Onion and the steward were permitted to live; and they have now testified such facts, as harrow up the soul. I know not what your reflections may be upon the crime you have committed; but death will be the consequence of it. You have been tried here in this court, and you will be called, hereafter, to render an account of your crimes before a more awful tribunal. Look back upon your past life—upon your evil deeds—and let repentance take hold of your hearts; there is some hope, some consolation, even for the most wicked. The christian religion will furnish balm for the wounded spirit. Rely upon the assistance of its holy ministers. They will teach you that God is merciful. Your salvation depends on him. Seek peace with him. Recall your bad actions, not to harden your hearts, but to convince yourselves how much you need his forgiveness.

Prisoners, hearken to your sentence, as the court award it.

SENTENCE.

John Williams, John P. Rog, Francis Frederick, Nils Peterson, alias *Nils Peterson Fogelgren,*

It is considered by the court here, that you be, and you hereby are, severally, deemed, taken, and adjudged. to be pirates and felons; and that you, the said John Williams, John P. Rog, Francis Frederick, Nils Peterson, *alias* Nils Peterson Fogelgren, and each of you, be hanged by the neck until you, and each of you, are dead. And it is further or-

dered and considered by the court here, that the Marshal of this District do, on peril of what may fall therefrom, cause execution to be done in the premises aforesaid, upon you, the said John Williams, John P. Rog, Francis Frederick, and Nils Peterson, *alias* Nils Peterson Fogelgren, on Thursday the twenty-first day of January next ensuing, between the hours of eleven o'clock in the forenoon, and two o'clock in the afternoon, of the same day; and that you, the said John Williams, John P. Rog, Francis Frederick, and Nils Peterson, *alias* Nils Peterson Fogelgren, be now taken from hence to the gaol in Boston, in the District of Massachusetts, from whence you came; there, or in some other safe and convenient prison within the district aforesaid, to be closely kept, until the day of execution; and from thence, on the day appointed for execution as aforesaid, to be taken to the place of execution in Boston aforesaid, there to be hanged as aforesaid.

And may God, in his infinite goodness, have mercy upon your souls.

The prisoners were then remanded.

ERRATA.

In the hurry which has necessarily accompanied the publication of this Trial, particularly on the part of the counsel for the prisoners, a number of errors have escaped observation; the following corrections and additions are therefore subjoined.

In page 29th, 17th line from the top, for "there," read, "then."

In page 30th, 20th line from the bottom, for "confess," read, "declare."

In page 31st, 2d line from the top, after the word "accomplices," read, "at least, (if not principals,) *if any crime was committed.*"

In page 33d, 7th line from the bottom, after the word "show," read, "as related by themselves." In the same line, after the word "deny," read, "But they *have* confessed enough, to prove themselves infamous; and if any transaction of that kind, took place on board that vessel, they have *withheld* enough, to prove themselves perjured." In the same page, 4th line from the top, after the word "received," read, "or it might rather be said, that it could not be; for the common law rejected such testimony; and pronounced, that no man, (*except approvers,*) should be heard, against the safety, and legal estimation of another, who, by the very terms of his evidence, *infamized* his own. The English statute law, admitted accomplices in certain instances, yet so admitted them, that in matters of felony, the evidence of an accomplice alone, should *not go to the jury*; but the judge would direct them that there was no evidence, on which the prisoner could legally be convicted." *Gilb.* 293. In page 33d, 10th line from the top, for "confession," read, "account." In page 35th, 12th line from the bottom, after the word "because," read, "if any crime was committed."

In the case of *Rex* vs. *Hindmarsh*, cited in the argument of Mr. Hooper, page 28th, the first count in the indictment, stated, that the defendant, by striking and beating, on board the sloop *Edar*, on the high seas, one *Samuel Burn Cowie*, did kill and murder him. The second count stated, that the defendant, by casting and throwing the said *Cowie* out of the said sloop, into the high seas, did kill and murder him. The evidence was, the testimony of one *Spears*; who swore, that he observed the prisoner take the said *Cowie* up, and throw him into the sea; and that *Cowie* was not seen or heard of afterwards. On *Garrow's* making the objection before stated, the court, which consisted of Sir *James Murriott*, *Ashurst*, *Hotham*, and several Doctors of the Civil Law, admitted, that this was not sufficient evidence of the death of *Cowie*; and the prisoner was convicted, solely on the ground, that *Cowie* was dead before being thrown into the sea. The authority of this case, so very similar in its circumstances, to the one which is the subject of the present trial; seems not to have been questioned, by the learned counsel for the government, in the very able argument, with which he closed the cause, on the part of the prosecution.

In page 47th, line 9th, for "mules," read "rauselrs."