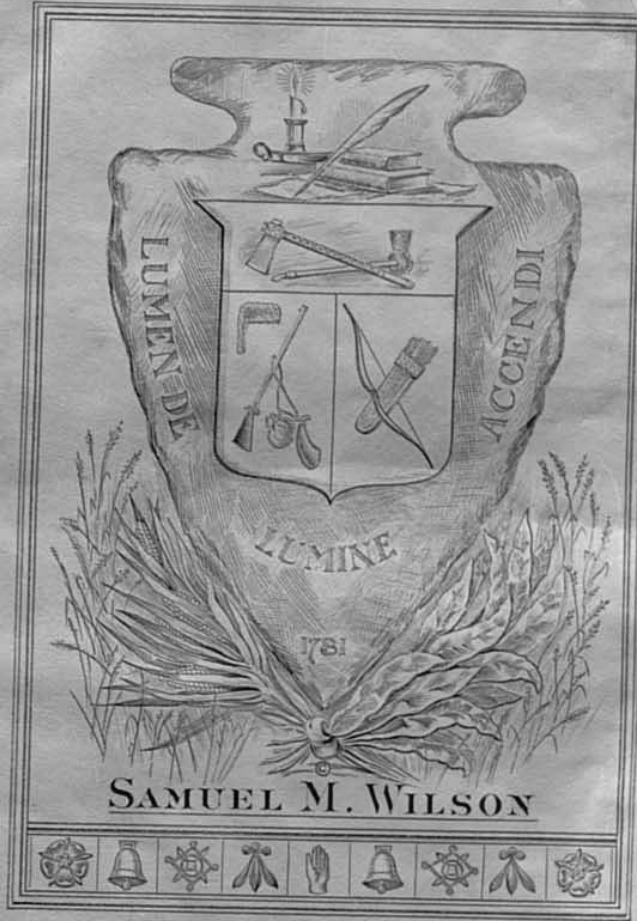


09.3X



Isaac B. Desha
A
Statement
OF THE
TRIAL
OF
Isaac B. Desha;

INDICTED FOR THE MURDER

OF

Francis Baker,

Late of Natchez, Mississippi; held at Cynthiana, Kentucky,

BEFORE THE

Hon: George Shannon.

By ROBT. S. THOMAS, and GEO. W. WILLIAMS.

LEXINGTON:

PRINTED BY T. T. BRADFORD, MILL STREET, ONE DOOR BELOW DR.
DUDLEY'S SHOP, AND NEARLY OPPOSITE BANK OF U. STATES.

.....
1825.

To the Public.

THE following sheets contain an account of a trial that has awakened much interest and excitement throughout our country. We have been induced to present it to the public, not for the purpose of extending the injury which the character of an individual who has hitherto stood fair with the world, has sustained, by having the enormous crime of murder and robbery charged to him; but for the purpose of enabling those who have heard the various rumours about that melancholy affair, to read and to judge for themselves. No party feelings with us have had a share in this business. God forbid it should be said of us, that through the influence of party we had become the instruments by which the bleeding hearts of an honourable and suffering family had been wounded afresh. We have endeavoured as far as our abilities extended to give a concise and impartial account of the trial. We hope that our motives will not be impugned, and under a firm conviction of the honesty of our intentions we lay it before the public.

(Copy-right Secured.)

AT
Court
the 20
dictme
and sv
to wit

empan
circu
at the
Flem
ber, A
of the
do pu
afore
A. D
coun
cis E
then
his o
and
knife
there
him
ly, v
stri
with
afor
Fra
said
of f
whi
the
for

STATEMENT, &c.

AT a special term of the Flemingsburg Circuit Court holden at the courthouse in Flemingsburg on the 20th day of December 1824, the following indictment was found by the Grand Jury empanelled and sworn for that circuit, against Isaac B. Desha, to wit:

COMMONWEALTH OF KENTUCKY,
FLEMING CIRCUIT, COUNTY OF FLEMING, SCT.

The GRAND JURORS for the Commonwealth empanelled and sworn for the body of the Fleming circuit at a court began and held for the said circuit at the courthouse of Fleming county, in the town of Flemingsburg on Monday, the 20th day of December, A. D. 1824, in the name and by the authority of the Commonwealth of Kentucky, upon their oath do present that Isaac B. Desha, late of the county aforesaid, tanner on the second day of November, A. D. 1824, aforesaid, with force and arms, at the county and circuit aforesaid in and upon one Francis Baker in the peace of our said Commonwealth, then and there being, feloniously, wilfully, and of his own malice aforethought did make an assault; and that the said Isaac B. Desha with a certain knife which he the said Isaac B. Desha, then and there had and held in his right hand, the throat of him the said Francis Baker then and there feloniously, wilfully, and of his malice aforethought did strike and cut, and that the said Isaac B. Desha, with the knife aforesaid, by the striking and cutting aforesaid, did then and there give unto him the said Francis Baker, in and upon the throat of him the said Francis Baker one mortal wound; of the length of four inches and of the depth of three inches, of which said mortal wound he the said Francis Baker then and there instantly died, and so the jurors aforesaid upon their oaths aforesaid do say that the

said Isaac B. Desha him the said Francis Baker in the manner and by the means aforesaid, feloniously, wilfully and of his malice aforethought did kill and murder, against the form of the statute in that case made and provided, and against the peace and dignity of the Commonwealth of Kentucky. And the grand jurors aforesaid upon their oath aforesaid, in the name and by the authority of the Commonwealth of Kentucky aforesaid do further present, that the said Isaac B. Desha, then and there to wit: on the second day of November, A. D. 1824, at the county of Fleming and circuit aforesaid with force and arms feloniously, wilfully and of his malice aforethought did make an assault in and upon the said Francis Baker in the peace of our said Commonwealth then and there being, and that the said Isaac B. Desha with a certain horse whip (loaded with lead) which he the said Isaac B. Desha in his left hand then and there had and held, the said Francis Baker in and upon the hinder part of the head of him the said Francis Baker, then and there feloniously, wilfully and of his malice aforethought, did hit and strike, giving unto him the said Francis Baker then and there by the stroke aforesaid in and upon the hinder part of the head of him the said Francis Baker one mortal wound of the length of three inches and of the depth of two inches of which said (last) mortal wound he the said Francis Baker, then and there instantly died, and so the jurors aforesaid upon their oath aforesaid do say that the said Isaac B. Desha him the said Francis Baker in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder against the form of the statute in that case made and provided, and against the peace and dignity of the Commonwealth of Kentucky.

JOHN CHAMBERS,

Attorney for the Commonwealth, for the 1st Judicial District.

Wh
custod
Comm
either
court
when
said
cause
the cl
Jan.
ble J
on w
hour
18th
mon
Esqr
Wm.
Crav

M
A
Geo
prog
T
and
plea
his
a p
faci
V
fiou
I
fiou
bar

Whereupon the said Desha was led to the bar in custody of the Jailor, and the Legislature of the Commonwealth having made it optionary with him either to be tried in that or the Harrison circuit court, he elected to stand a trial in the latter court, when he was conveyed under guard to the jail of said last mentioned county, and the papers in the cause were transmitted, pursuant to the act granting the change of venue aforesaid. Monday the 17th of Jan. 1825, was set apart by the Hon. John Trimble Judge of the Harrison circuit court, for the trial; on which day the court convened but at two late an hour to enter into business and adjourned until the 18th. Wm. K. Wall, Esq. attorney for the Commonwealth, Jno. Chambers, and Martin P. Marshall Esqrs. assisted in the prosecution. Jno. Rowan, Wm. T. Barry, Wm. Brown, T. P. Taul and Jas. Crawford, Esqrs. counsel for the prisoner.

TUESDAY, JANUARY 18th, 1825.

Met pursuant to adjournment.

At the request of the Hon. John Trimble the Hon. George Shannon took his seat to preside during the progress of the trial.

The prisoner was led to the bar in custody, &c. and being arraigned upon the indictment aforesaid, pleaded *not guilty*, and for his trial put himself on his country, whereupon the Sheriff having furnished a pannel of the jury summoned pursuant to the venire facias awarded herein.

William L. Fisher was sworn to answer questions.

Question by attorney for the Commonwealth.

Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar?

Ans. I have not

Ques. *by the same*, Are you of the opinion that

capital punishments should be inflicted for any crime whatever?

The counsel for the prisoner objected to the answering of this question by the juror, and adduced various arguments in support of their objection, to which the attorney for the Commonwealth replied and insisted that the holding of such an opinion was good cause for challenge.

Court—There is no instance on record of such a latitude of enquiry having ever been indulged; as well might you investigate his religious principles—the law has fixed particular punishments for particular crimes, and every conscientious man would suffer his principles to be controlled by the law—the question is improper.

In answer Mr. Fisher further stated that he had not heard much upon the subject until very lately, having been from home and held it imprudent to form an opinion, unless upon facts—he took his seat on the venire.

John Wyatt and Charles Kelsoe, being sworn stated that they had neither formed nor expressed an opinion, had heard much said on the subject—took their seats on the venire.

Paul Smith being sworn stated that he had formed no opinion on the subject; that his business had kept him at home, and that what he had heard was not a sufficient ground to form an opinion upon—he took his seat on the venire.

Benjamin Parks, being sworn stated that he had formed no opinion—he took his seat on the venire. The counsel for the Commonwealth moved the court to prevent the counsel for the prisoner, from having any conference with disinterested bystanders for the purpose of obtaining information with regard to the character or family of the juror under examination;

the motion was opposed by the counsel for the prisoner and rejected.

Henry North being sworn stated that he had no fixed opinion, that he had heard nothing on which he could depend—he took his seat on the venire.

John Miller being sworn stated that he had formed no opinion—took his seat.

Jno. White being sworn stated that he had formed no opinion but from rumor—he took his seat.

Nathan Tompkins being sworn stated that from reports he had formed a partial opinion—took his seat.

The court then adjourned until tomorrow morning nine o'clock.

WEDNESDAY MORNING, JAN. 19th, 1825.

Met pursuant to adjournment.

Harrison Kimbro being sworn stated that he had formed no opinion; and was admitted on the venire.

Joshua Jones being sworn stated that he had formed no opinion—took his seat.

Stephen Shumate being sworn stated that from rumor he had formed an opinion, but that it was not a fixed opinion—and took his seat.

This being the competent number of Jurors they were sworn, heard the indictment read, and received the proper charge.

Before entering into a detail of the evidence it may be proper to remark, that during the time occupied in obtaining a jury, there were thirty six persons sworn and examined, but were discharged as incompetent jurors, owing to their having formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, and that there were but eleven peremptory challenges by the prisoner. It was moved by the counsel for the prisoner to exclude all the witnesses for the Commonwealth from the court, except the one under examination. The

motion was sustained. The attorney for the Commonwealth then moved that the witnesses for the prisoner should in like manner be excluded from the court and particularly during the examination of the witnesses for the Commonwealth. The motion was opposed by the counsel for the prisoner, but was carried in part, the witnesses for the prisoner being permitted to remain during the examination of those for the Commonwealth, but must all be excluded when they are themselves to be examined, except the one under examination. The court then proceeded to the examination of the witnesses, in behalf of the Commonwealth.

***ZEDEKIAH MOORE**, was first called and sworn.*

Question by attorney for the Commonwealth.

Did not a gentleman by the name of Francis Baker lodge at your house on the night of the first of November last?

Ans. Yes.

Ques. What time did he leave your house?

Ans. About sunrise.

Ques. When did you see him afterwards?

Ans. In about eight days.

Ques. Where did you see him?

Ans. I saw him in his coffin at Shannon's meeting house.

Ques. Was it the corpse of the same man who lodged at your house on the night of Nov. 1st and are you satisfied of it?

Ans. I am satisfied that it was the same man.

Ques. What kind of horse was he riding?

Ans. A grey mare.

Ques. Have you since seen the mare?

Ans. I have.

Ques. In whose custody?

Ans. Col. Goddard's.

Com-
or the
in the
of the
n was
s car-
g per-
se for
when
e one
led to
of the

Ques. Are you satisfied that it was the same mare
that Baker had at your house?

Ans. I believe her to be the same mare.

Ques. What kind of clothing did Francis Baker
wear?

Ans. He was dressed in a blue cloth coat and pan-
taloons, and a light coloured waistcoat, which I be-
lieve was made of silk.

Ques. Did you see any clothing about his person
after his death?

Ans. None.

Ques. Had he a watch?

Ans. He had.

Ques. Had he a pair of saddlebags?

Ans. He had.

Ques. Describe them.

Ans. They were an ordinary pair about half worn.

Ques. Did the saddlebags contain clothing?

Ans. They were very full of something.

Ques. Were they heavy?

Ans. They were not.

Ques. Would you know the saddlebags if you
were to see them?

Ans. No. I saw a pair in Flemingsburg which
perhaps were the same, but they were much disfig-
ured.

Ques. Do you recollect any marks on them?

Ans. His name was on them for I examined them.

Ques. Where was his name written?

Ans. On the underside of the flap.

Ques. Do you recollect the description of saddle-
bags of which they were?

Ans. I have some recollection of it.

Ques. Have you seen them since the decease?

Ans. I have.

Ques. From your recollection of them are you not
satisfied they are the same?

Ans. They look'd a good deal like them.

Ques. In whose custody was the mare when you saw her, and by whom was she shown to you?

Ans. She was shewn to me by Gen. Reid at Goddard's stable in Flemingsburg.

Questions by the Counsel for the prisoner.

Ques. Do you keep an Ostler or not?

Ans. I do.

Ques. Was the mare taken and brought out by the Ostler?

Ans. Yes.

Ques. Did you attend to the mare yourself?

Ans. I paid particular attention to her; I looked at her and examined her closely.

Ques. What time did he arrive?

Ans. About two hours by sun in the evening.

Ques. Did he ask you to look at the mare?

Ans. He did in the morning.

Ques. Was she saddled?

Ans. She was.

Ques. Was she not a high and handsome nag?

Ans. She was about fifteen hands high or not so much; she was a pretty mare.

Ques. Do you found your recollection of her from the notice you took of her general form?

Ans. Yes; from nothing particular.

Ques. Did you observe the saddle particularly?

Ans. I did; the stirrups were remarkably slender.

Ques. Have you examined the saddle more particularly since the death?

Ans. I have not, but it looked like the same.

Ques. Was not Baker drunk when at your house?

Ans. He was; he could scarcely sit in his chair.

Ques. Did he drink in the morning?

Ans. He drank two glasses of bitters before he started.

Ques. Was he thirsty in the morning?

Ans. He said he was; he had eat no supper.

Ques. Would he not have drank more if you had permitted him?

Ans. No; the over-evening I would not give him any thing.

Ques. Did he not come back when he was about to start and get more?

Ans. He started but returned and took a second glass.

Ques. Were the saddlebags light or heavy?

Ans. They were light.

Ques. Did you see him have any money?

Ans. I believe I saw all the money he had.

Ques. How much did he have?

Ans. I think about a hundred dollars.

Ques. Were there other lodgers at your house on that night?

Ans. There were three or four or five.

Ques. Did any other person see the money?

Ans. No one but myself.

Ques. Do you recollect whether he indicated that he was wealthy?

Ans. No; I had but little conversation with him that night; he was very silent.

Ques. Was he so intoxicated that he could not sit?

Ans. At night he became very drunk.

Ques. Did any body come with him to your house?

Ans. He got dinner at Russel's and came to my house on horseback with the stage driver.

Ques. What was the stage drivers name?

Ans. Bryan.

Ques. On what rout did Bryan drive?

Ans. He drove from the Blue Licks to Graves'

Ques. from the appearance of Baker would you have thought him to be a man of fortune?

Ans. I would not.

Ques. Were those persons who were about your house strangers?

Ans. They were acquaintances.

Questions by the Attorney for the Commonwealth.

Ques. What was the conduct of Francis Baker while at your house?

Ans. He behaved well, and for a drunken man better than common.

Ques. Was not his conduct that of a gentleman though intoxicated?

Ans. It was.

Ques. Was he intoxicated when he left your house?

Ans. No.

Ques. Did he leave your house alone?

Ans. He did.

Ques. How far from your house to Dogget's?

Ans. Five miles.

Questions by the Counsel for the prisoner.

Ques. Had he a watch or not or do you only think he had?

Ans. I cannot say positively, but I am under the impression that he had.

Ques. Have you any recollection of its metal?

Ans. I have not.

Ques. When he returned his money to his pocket do you recollect of his putting a dollar or two of silver in his watch pocket?

Ans. I think he did, I gave him specie to pay Russel's bill.

Ques. Had he a big coat or a cloak?

Ans. He wore a green plaid cloak as well as I recollect; *he also wore spectacles.*

Ques. Had his saddlebags strops and were they over the stirrups?

Ans. They were not fastened with strops, I advised him not to fasten them in that manner; told him there was danger if the horse got loose; as he had been drunk the evening before and appeared some what genteel I was rather particular with him; he said he had been in a frolic; he had been three or four days coming from Lexington.

Ques. You do not know then whether or not they had strops?

Ans. I do not recollect whether they had or not.

Ques. Had the saddlebags any provision in the bottom for carrying shoes?

Ans. I do not recollect.

Ques. Do you know whether he had arms with him or not?

Ans. I saw none.

Ques. Was Baker an easy communicative man?

Ans. He told me where he was from.

Ques. Did he give you any intimations with respect to his property?

Ans. None.

Questions by the Attorney for the Commonwealth.

Ques. Had he a whip with him of any kind?

Ans. None.

Ques. Did he not wear spectacles; what description were they?

Ans. He did; they had a silver frame.

Ques. Was he not a man of apparent decency?

Ans. I thought him a decent man; although he did not travel in a costly manner.

Questions by the Counsel for the prisoner.

Ques. Were not his coat and cloak somewhat worn?

Ans. Pretty much so.

Ques. Was or not his dress the last for a wealthy man?

Ans. I should not have thought him wealthy.

Questions by the Attorney for the Commonwealth.

Ques. Do not men frequently stop with you who make poor appearances, but who are wealthy?

Ans. I cannot say; but poor men sometimes cut a good figure and wealthy men often cut but a poor figure.

RICHARD DOGGATE, introduced and sworn.

He stated that Desha the prisoner, and Baker both breakfasted with him on Tuesday morning the 2nd of November last, that they both appeared peaceable, that they went off after breakfast, but he did not see them start.

Questions by Attorney for the Commonwealth.

Ques. At what time did Baker arrive at your house?

Ans. Tolerably early in the morning.

Ques. Were there any other persons who breakfasted with you that morning?

Ans. There were nine who breakfasted with me.

Ques. Did you notice the animal Baker rode?

Ans. I think it was a grey beast and that he hitched her to the fence.

Ques. Did she have saddlebags on while there?

Ans. She had.

Ques. Did you learn the strangers name whilst at your house?

Ans. I did not.

Ques. Did you see the murdered man?

Ans. I did see him while a corpse.

Ques. Do you think it was the corpse of the man who breakfasted with you on the morning spoken of?

Ans. I do.

Ques. From your observation of him whilst at your house are you certain that the murdered man you saw was the same?

Ans. I believe he was.

Ques. Was the mare that was said to be Baker's the same you saw at your house?

Ans. I could not say positively.

Ques. Had Mr. Desha staid all the night of first of November with you?

Ans. He did for the first time since my recollection.

Ques. What time did Desha come to your house?

Ans. Late in the evening.

Ques. Did you see him start away?

Ans. No.

Ques. Had Desha any saddlebags that evening?

Ans. He had not.

Ques. Had he a whip at that time?

Ans. He had.

Ques. Had it a lash?

Ans. It had not. I told the waggoners to make their bills and turned myself and gave Desha's whip to him.

Ques. Was it a loaded whip?

Ans. I think it was, and that it was pretty large though I paid no particular attention to it.

Ques. Do you know whether Desha had been on a journey or not?

Ans. I do not.

Ques. How far is it from your house to Desha's?

Ans. About four miles.

Ques. Does Desha live in the neighborhood of his father?

Ans. He does.

Ques. What kind of clothing had Desha when at your house that night?

Ans. I think he had on a blue roundabout.

Ques. Did you see him have a large red morocco pocket book?

Ans. I did not.

Questions by Counsel for prisoner.

Ques. Do you recollect of Desha's finger bleeding that morning?

Ans. His finger was cut I tied it up and put some balsam apple on it; it was a tolerable bad cut.

Ques. Did you not put on the balsam apple for the purpose of stopping the blood?

Ans. It had been bleeding but it did not bleed much after I tied it up; two were cut but I only tied one.

Ques. You say there were at breakfast eight or nine others with Desha and Baker?

Ans. There were six waggoners; Burress, Baker and Desha made nine.

Ques. You say the horses were hitched, do you recollect if Baker's had a pair of saddlebags on?

Ans. I took no particular notice of Baker's beast, but he had a pair of saddlebags when he came.

Ques. Is it from your own recollection?

Ans. It is.

Ques. What was Bakers appearance; did he look like he had money?

Ans. He did not appear so to me; but they were both nice men.

Ques. Would you have thought him to have been a man travelling with money?

Ans. I should not have thought he was; he gave me 50 cents and I returned 10 cents in change.

Ques. Did he wear a cloak or a big coat?

Ans. He wore a cloak, he took it off and put it on the bar-room door; it laid there till he started.

Ques. Were you present while they were eating breakfast?

Ans. I went in when they commenced; went out but returned again; Desha carved for them.

Ques. Did Baker drink with the waggoners?

Ans. Baker got one half pint of whiskey and invi-

ted the rest to drink; having drank it he called for another, but I did not see Baker drink more than once out of each.

Ques. What do you know about the whip?

Ans. I did not notice so particularly as to be able to describe it minutely.

Ques. Are you or are you not able to say that the whip which was shewn you, was a larger one than that of Desha's?

Ans. I cannot say.

Ques. Was there not a man in your employment at that time of the name of Davis?

Ans. There was?

Ques. How was he employed whilst they were at breakfast?

Ans. He was about the house and waggon yard before, but does not know exactly where he was, at that time.

Ques. Was this man's beast taken?

Ans. No.

Ques. Did Davis attend to the taking of horses?

Ans. He did.

Ques. Was Davis there when Baker came?

Ans. Yes; Baker first spoke to Davis & asked him if he could get breakfast, Davis replied that he could.

Ques. Then what was Davis about?

Ans. I don't know precisely what, but he (Davis) was not immediately at the house.

Ques. Had Davis resided long in the neighborhood?

Ans. About two months.

Ques. Did he live there before?

Ans. No; he was raised in Virginia, near Berry's ferry as I understood, but did not know any thing about him.

Ques. Did he come to your house as a traveller?

Ans. He did.

Ques. Did he come on foot or on horseback?

Ans. On foot.

Ques. Does he live with you now?

Ans. No.

Ques. Is Davis a sober man?

Ans. As much so as common, is sometimes inotxi-
cated, but is steady to his business.

Ques. Is he inclined to thirst?

Ans. Not more than common, he however likes a
dram.

Ques. Was he young and hearty?

Ans. Yes.

Ques. At what wages did you employ him?

Ans. At the rates of eight dollars per month, Da-
vis observed when I employed him that he was both
out of money and work.

Ques. Have you a particular recollection of where
Davis was?

Ans. I am not certain, but expect he was about
feeding or getting corn.

Ques. How long was it afterwards till Davis came in?

Ans. At least an hour; my guests breakfasted,
and some of them started, after a while breakfast was
prepared for the family, the horn was blown for the
out hands and Davis with the rest came in.

Ques. Do you recollect distinctly that he came in
about the time that the family sat down to breakfast?

Ans. Yes, I do, Williams, Davis and my boys,
came in together.

Questions by attorney for Commonwealth.

Ques. Are you satisfied that Davis was about the
house when the stranger came?

Ans. I am.

Ques. Did he act as ostler?

Ans. Yes, or as any thing else about the place.

Ques. Was breakfast preparing?

Ans. It was.

Ques. Did you see Davis till the horn was blown?

Ans. Davis was about the house a little before, but went off again.

Ques. This was after Baker left your house, was it?

Ans. I am not certain, but think it was.

Ques. Would Davis have received higher wages if you had offered them?

Ans. I presume he would, I employed him at his own say so, which was six dollars in currency, for a week or two, and then engaged him by the month at eight dollars.

Ques. Was Davis acquainted with the currency?

Ans. He was.

Ques. How long did you keep him?

Ans. About two months.

Ques. Had he been long in the country?

Ans. Not long.

Ques. Is he now in the neighborhood?

Ans. He is mulling at Clark's.

Ques. Did you untie Desha's finger?

Ans. I did.

Ques. Was the rag on the finger dry?

Ans. It was, but the finger bled when it was untied, the rag was right bloody but was not very wet, but stiff.

Ques. Did it bleed after it was tied?

Ans. Very little; I did not hear any more complaint.

Ques. Were you acquainted with the waggoners?

Ans. I was.

Ques. Were they men who follow the road and their business constantly?

Ans. They do.

Ques. Had you been acquainted with them for any length of time?

Ans. I had.

*THOMAS DAVIS, introduced and sworn.**Questions by the counsel for the Commonwealth.*

Ques. Were you at Doggate's on the morning when Baker and Desha were there?

Ans. I was there.

Ques. State what you were about, and what transpired.

Ans. After waiting on some waggoners I started ploughing, but before I had gone out Baker rode up and asked the time of day, I told him I did not know, there being no watch or clock about the house; I told him breakfast was on the table; he rode up and got down; I asked him if he wanted his horse fed, he said no, she had been fed; he went in, and I went to work.

Ques. Were you there when Baker went away?

Ans. I was not, I was in the field.

Ques. Were you at work when breakfast came on?

Ans. I did not come in till the horn blowed.

Ques. Did you breakfast with the family?

Ans. I eat breakfast with the family after the others were gone.

Ques. Have you since seen the mare rode by Baker?

Ans. I have.

Ques. Where at?

Ans. At General Ried's, and at Flemingsburg.

Ques. Are you satisfied that the mare you have seen since, was the same Baker rode that morning?

Ans. I thought it was the same.

Ques. Were not some waggoners and yourself looking at her?

Ans. Yes.

Ques. Did you discover any brand, when you first examined her?

Ans. I did not at that time, nor at Ried's.

Ques. Have you since been shown a brand?

Ans. I have seen something like a brand on close examination; I could feel it.

Ques. Could the brand be seen at a distance?

Ans. It could not.

Ques. Had Baker a pair of saddlebags?

Ans. I cannot say certainly, I took no particular notice.

Ques. Why did you notice the mare?

Ans. She was remarkable.

Ques. Was she a handsome nag?

Ans. She was.

Ques. Had you been at Doggate's through the night?

Ans. Yes.

Ques. Was Desha there that night?

Ans. Yes; he staid all night.

Ques. Have you any recollection of Desha's bridle?

Ans. I have

Ques. Have you seen one since which you know to be the same?

Ans. I have, and think it the same.

Ques. Is this the bridle?

Ans. I think it is.

Ques. Did you notice the bridle on the morning at Doggate's?

Ans. Not that morning; Desha was there sometime before; his horse broke loose, he got on Ball's horse and rode him to the stable, he found his bridle with both buckles broke, he asked for a knife I lent him mine and he cut two holes, one under each buckle.

Ques. Will you look at this bridle and see if you can show the marks you mention?

(The witness took the bridle and exhibited the marks to the Jury.)

Ques. How long was it before Baker was at Doggate's that this happened?

Ans. I cannot say positively how long.

Ques. Did you say that you assisted him in mending the bridle, or did you only lend him your knife?

Ans. I lent him my knife but did not help him.

Ques. Do you recollect when Desha arrived?

Ans. When I came in he was there, his horse was standing.

Ques. Did you take his horse?

Ans. I did.

Ques. Did he have more than one horse?

Ans. He had not.

Ques. Had he any saddlebags?

Ans. He had none when I put away the horse.

Ques. Did you accompany Desha to his bed-room?

Ans. I did and slept in the same room.

Ques. Do you recollect his coat?

Ans. It was a round about.

Ques. Did you see Desha have a large red morocco pocket-book?

Ans. I did not, after I had gone to bed Desha got out some papers and read them by the candle, but I did not know what they were.

Ques. Do you recollect whether Desha had a dirk?

Ans. I do, it was a tolerable size dirk with a silver scabbard, he drew it out of his pantaloons and observed that he always carried one, although he never found any use for it; he then placed it under his pillow not having drawn the dirk from the scabbard.

Ques. Did you ever see it before?

Ans. No.

Cross examined by counsel for prisoner.

Ques. What kind of scabbard had the dirk?

Ans. Silver. I saw it across a large room which contained four beds.

Ques. Would you know it should you see it again?

Ans. I do not think I would, having only seen it for a moment.

Ques. Was the scabbard round square or flat?

Ans. I cant say, not having been near it, it looked something as though it were three square.

Ques. Is this the dirk (the counsel presenting one with a round silver scabbard)

Ans. I do not know that it is.

Ques. Was it about the size of this?

Ans. I think the one in Desha's possession was larger than this.

Ques. Had the one you saw a silver handle?

Ans. I only saw the scabbard.

Ques. When was it that you lent Desha your knife to mend his bridle?

Ans. It was some time before at Doggate's.

Ques. How long before?

Ans. About a week or such a matter.

Ques. Who was by?

Ans. Young Doggate and John Wright a waggoner.

Ques. Where were you when Baker came up?

Ans. In the waggon yard.

Ques. Had you gone to ploughing?

Ans. I was on the way, and was in the waggon yard as I stated.

Ques. When you were asked the time of day you observed that there was no clock or watch about the house, did you not?

Ans. I told him that there was no watch and that the clock was not running.

Ques. Did you go to the house?

Ans. No I only went to the fence.

Ques. Were you in the house after Baker came?

Ans. I was not, for I went to work.

Ques. How far from where he stopped to the waggon yard?

Ans. But a short step, the waggon yard is between the stable and the house.

Ques. Do strangers go thro' the waggon yard to get to the house?

Ans. Yes.

Ques. Was there any one with you then?

Ans. Yes Samuel Bair was.

Ques. Where is he?

Ans. Not here.

Ques. Was there any thing extraordinary about the mare?

Ans. She was a well made handsome mare.

Ques. Was it a rare thing to see a fine mare?

Ans. It was not.

Ques. What part of her did you think so handsome?

Ans. Every part.

Ques. What attracted your attention to her?

Ans. Because I thought she would match a mare belonging to my father.

Ques. How long since you saw your father's?

Ans. In March.

Ques. Is this the first match that you have seen to your father's?

Ans. Yes.

Ques. How high was she?

Ans. 13 or 14 hands high I suppose.

Ques. Were you at her side when looking at her?

Ans. No.

Ques. Was your father's a mare?

Ans. Yes.

Ques. Did you ascertain that this was a mare before the stranger went away?

Ans. I cant say positively.

Ques. How long was you looking at her?

Ans. But a few minutes.

Ques. Were you certain that she was a mare before she left you?

Ans. I was not.

ard to
or horse?
Ques. I want you to say whether she was a mare

Ans. I did not examine closely.

Ques. Then you did not know?

Ans. I do not think that I observed that it was a mare.

Ques. Was she featured like other grey mares?

Ans. I never saw one like her, she had a kind of reddish rump, purple weathers, and speckled jaws.

Ques. Did you notice all this at that time or since?

Ans. At that time.

Ques. You acted in the capacity of an ostler, was it your habit to notice horses particularly?

Ans. I was ostler, but did not notice horses particularly.

Ques. The only reason why you noticed her was because she matched your father's was it?

Ans. Yes.

Ques. Do you recollect to have given it as a reason at the former trial, for your particular examination that she was the handsomest mare you ever saw?

Ans. I said she was the handsomest mare I had seen in Kentucky.

Ques. Was your fathers larger or smaller than this?

Ans. Something larger.

Ques. How high was your fathers mare?

Ans. About fifteen or sixteen hands.

Ques. Do you mean that this mare had freckles on her face, when you say her features were remarkable?

Ans. Yes.

Ques. Then she did not match with your father's in size?

Ans. Not in size, but in color.

Ques. You say she was speckled on the jaws?

Ans. Yes.

Ques. Have you seen other grey mares with speckled jaws?

Ans. I have seen some with and some without.

Ques. Did any body ride a grey nag before this, to Doggate's?

Ans. I dont think any traveller did.

Ques. Are there any grey nags in the neighborhood?

Ans. A good many.

Ques. Who has them?

Ans. Mr. Ball has one.

Ques. What size is Ball's?

Ans. A small mare.

Ques. Have you seen her at different times?

Ans. I have.

Ques. Was her countenance remarkable?

Ans. I did not know it from any other.

Ques. Did you examine her particularly?

Ans. I did not.

Ques. Would she match your fathers?

Ans. I think not.

Ques. How then do you know that Baker's nag would match your fathers?

Ans. I have frequently worked with my father's and know they would match.

Ques. Was she wet with sweat when Baker rode up?

Ans. I did not notice any sweat.

Ques. If there was any sweat where was it most perceivable?

Ans. I say I did not see any.

Ques. Was she nicked or not?

Ans. She had a long switch tail.

Ques. Did you notice her tail then or have you noticed it since?

Ans. I noticed it then as much as at any other time.

Ques. Did you notice whether she was shod or not?

Ans. I did not.

Ques. When he came up was he riding in a trot, pace, or walk?

Ans. In a walk.

Ques. Was there any particular mark on her which would enable you to recognize her as the same you saw at Flemingsburg?

Ans. Only from general marks.

Ques. Did you notice a brand on her at that time.

Ans. I did not.

Ques. Have you since?

Ans. I have seen something like one, which might be plainly felt.

Ques. If no occurrence had happened would you have known the mare you saw at Flemingsburg to be the same the stranger rode?

Ans. I think I would.

Ques. When the corpse was found did you know it to be the same man you saw at Doggate's?

Ans. I did not, the stranger having had his cloak and hat on that morning I did not notice him particularly.

Ques. Which did you notice most the man or his mare?

Ans. The mare.

Ques. Did you look in the mare's mouth?

Ans. I did not for I am not a judge of a horse's age.

Ques. The only reason for your knowing the bridle is from the cuts in it you say?

Ans. Yes, it had similar cuts and a similar bit.

Ques. Did your father send you out on business.

Ans. No, I came out to see my relations.

Ques. Where does he live?

Ans. In Frederick county in Virginia.

Ques. Have you relations in this state?

Ans. Yes.

Ques. Where do they live?

Ans. In Bourbon county near Paris.

Ques. Were they near relations?

Ans. Yes.

Ques. What?

Ans. My father's uncle.

Ques. Did you see this bridle on the morning Desha started from Doggate's?

Ans. I do not think I did.

Ques. Did you strip Desha's horse on the evening before?

Ans. I did, and put his saddle and bridle behind the door.

Ques. Did you notice the bridle then?

Ans. I did.

Ques. Did you bring out Desha's horse next morning?

Ans. No.

Ques. Did you notice the bridle then?

Ans. I cant say I did, but I knew it having seen it before.

Ques. What route did you come?

Ans. Through Maryland and Pennsylvania to Pittsburg.

Ques. Did you leave your father's on horseback or on foot?

Ans. On foot, I started out to see the world and country.

Questions by attorney for Commonwealth.

Ques. While the grey mare stood there you did not notice whether she was a mare or horse?

Ans. No.

Ques. Do you say that you did not observe her height?

Ans. No not particularly but thought her about thirteen or fourteen hands high.

Ques. Was your meaning that you never had taken so much notice at the first sight?

Ans. Yes.

Ques. Had the bridle which you mention a bit of this kind?

Ans. Yes, I think it is the only one of the kind that I have seen.

Ques. You have seen long-jawed bits which were not plated have you not?

Ans. I have seen plain long-jawed steel bits.

Ques. Do you distinctly recollect that those cuts were made that night?

Ans. I do.

Questions by counsel for prisoner.

Ques. Was it in the day or night that the horse broke loose?

Ans. It was in the night, for I took a candle to the stable where he was caught directly afterwards.

Ques. Had Desha's bridle a throatlatch the evening he came to Doggate's?

Ans. It had for I took off the bridle myself.

Ques. Who held the creature while Desha was mending the bridle?

Ans. John Wright I think.

Ques. Is he here?

Ans. Not that I know of.

Ques. Did you never see bridles mended in that way before?

Ans. I have seen them mended with sticks but never saw one turned in like this.

Ques. Did you notice any thing of saddlebags on the creature?

Ans. My attention was not drawn either to the saddle or saddlebags.

Ques. (By Juror) How long before Desha came

to Doggate's on the 1st of November was it that Desha's bridle was broke?

Ans. A week or more before.

Ques. Are you certain this is the same bridle which was on Desha's horse?

Ans. I am certain.

Ques. Did you notice the bridle particularly when you stripped Desha's horse?

Ans. There was nothing to draw my attention particularly to it that evening.

Ques. Was it or not after night when you took Desha's horse?

Ans. When I came in from work and put away the work horses I then took Desha's horse, which was before dark.

Ques. What enables you to recognize this as the same bridle?

Ans. Nothing but the marks.

Ques. Are you sure you had this bridle?

Ans. I am.

Ques. Where did you leave the saddle?

Ans. At the house.

Ques. Did you notice those marks?

Ans. I did.

Ques. What induced you to do so?

Ans. I did not do it because I was curious.

Ques. Did you hold it up?

Ans. I carried it by the headstall.

Ques. Did you bring no other bridle from the stable that evening?

Ans. No.

Ques. Where did you put Desha's?

Ans. Behind the door.

Ques. How did Doggate know where to find it?

Ans. Because it was put in the usual place.

Ques. What did you do with the saddle?

Ans
the ho
Que
was ta
Ans

N.A.J

Q

Que

came

Ans

to bre

Que

Ans

Que

Ans

Que

Ans

Que

Ans

Que

Ans

Que

Ans

Qu

ted?

Ans

Qu

rode t

Qu

Ans

Ans. Why I left it at the house before I put away the horse

Ques. You think it was not dusk when the horse was taken away do you?

Ans. I do.

NANCY DOGGATE, introduced and sworn.

Questions by attorney for the Commonwealth.

Ques. Were you at your father's when Baker came there?

Ans. I was, but did not see him until he came in to breakfast.

Ques. Who were there at breakfast?

Ans. There were nine gentlemen there.

Ques. Was Desha there?

Ans. He was.

Ques. Did you know the stranger?

Ans. I did not.

Ques. Were there any waggoners there?

Ans. Yes, six.

Ques. Did you know when Baker left there?

Ans. I did.

Ques. Did he go with any body?

Ans. Baker started a little before Desha did.

Ques. Did you see Desha overtake him?

Ans. I did.

Ques. How far had Baker got when Desha started?

Ans. About thirty yards.

Ques. How far did you see them ride together?

Ans. About two hundred yards.

Ques. Did you stand at the door until they had rode two hundred yards?

Ans. Yes.

Ques. Did you then go into the house?

Ans. I did.

Ques. How long after breakfast before they started?

Ans. But a little while; the family had not had breakfast.

Ques. Did you see the stranger afterwards?

Ans. I did.

Ques. Where?

Ans. At Gen. Ried's.

Ques. Did you wait on the table at breakfast?

Ans. I did.

Ques. Were you satisfied that the corpse was that of the same man who breakfasted at your house with Desha?

Ans. I am certain.

Ques. Was there any thing remarkable in his appearance which attracted your notice?

Ans. Yes; he was bald.

Ques. Was it this which enabled you to know him certainly?

Ans. It was.

Ques. Was Desha there all night?

Ans. Yes he came the over-evening.

Cross Examined.

Ques. What time the over night did Desha arrive?

Ans. About dusk.

Ques. Will you recollect whether it was not a little after dusk?

Ans. It was just at dusk before night.

Ques. Was it night or day?

Ans. Daylight was not quite gone.

Ques. Where was Davis when he came?

Ans. I do not recollect exactly but he was about home.

Ques. when Desha arrived had the hands come in from work.

Ans. Yes.

Ques. What clothes had the stranger on?

Ans. He had on a plaid cloak when he started.

Ques. Had he saddlebags?

Ans. He had.

Ques. Did you see him get on his horse?

Ans. Yes; I saw him mount from the steps.

Ques. Do you recollect whether Davis was sober the evening before?

Ans. I do not recollect whether he was or was not.

Ques. Did you see Davis in the morning?

Ans. I think he was about his work till breakfast.

Ques. He was not there then when the gentleman came up?

Ans. He was about the waggons when he came, I think.

Ques. Are you sure you saw Davis in the house before breakfast?

Ans. He was in the house.

Ques. Did he remain in the house till after breakfast?

Ans. I dont know.

(Question by Juror—Was Davis in the same room with Baker before breakfast?

Ans. He was.)

Ques. Are you certain?

Ans. I am.

Ques. Do you recollect whether Davis was at breakfast with the family?

Ans. He was.

Ques. Do you know whether Davis went out to work before breakfast?

Ans. I think he was about the waggon yard until the family eat breakfast, which was sometime after the others had breakfasted.

Ques. How long after Baker arrived was it that you saw Davis in the same room?

Ans. Shortly after.

Ques. Who brought out the horses that morning?

Ans. Davis.

Ques. Are you sure of that?

Ans. I think so.

Ques. Did you see Desha's horse brought out?

Ans. I did.

Ques. Could you have been deceived in Davis?

Ans. I am sure Davis brought him.

Ques. You say you saw the horse brought and who brought him.

Ans. There was no person to do it but Davis and my father.

Ques. And are you sure it was not your father?

Ans. Yes; it was Davis.

(Question by Juror—Do you recollect the color of the beast which Baker rode?

Ans. It was a grey beast.

Question by same—Had Desha more than one beast?

Ans. He had but one.)

Ques. You say that you waited on the table, did you see any thing to attract your attention?

Ans. I saw nothing more than usual.

Ques. Did Baker and Desha seem strangers to each other?

Ans. They did.

Ques. Do you recollect Desha's clothing that morning?

Ans. He had a pair of Janes pantaloons and a cloth roundabout.

Ques. What color was the cloth?

Ans. Black.

Ques. Do you recollect the color of the pantaloons?

Ans. A dark mixed.

Questions by the Attorney for the Commonwealth.

Ques. You was engaged that morning about breakfast?

Ans. I was.

Ques. It is your impression that you saw Davis in the house is it?

Ans. He was in the house just before breakfast.

Question by Juror — Did you see Davis and Baker in the same room before breakfast?

Ans. I did.

Questions by attorney for Commonwealth.

Ques. Are you certain that Davis had come in from work when Desha came?

Ans. He had turned out before Desha came.

Ques. Are you certain that you saw him or do you only judge from the time of day?

Ans. I saw him.

Ques. Did you see Baker until he came into breakfast?

Ans. No. I was in another room.

Questions by the Counsel for the prisoner.

Ques. Did not on the morning that the stranger came, Davis come into the kitchen to wash?

Ans. Yes he came in for water.

Ques. Did he go through the room where the strangers were?

Ans. No he came round the porch to take the water in the room.

And the Court adjourned until tomorrow morning nine o'clock.

THURSDAY MORNING, JAN. 20TH, 1825.

The Court met pursuant to adjournment.

MARGARET SULLIVAN, introduced and sworn.

Ques. Were you at Mr Allen's house on the morning of the 2nd of November last?

Ans. I was.

Ques. How far is Allen's from Doggate's?

Ans. About a quarter of a mile.

Ques. How far is the house from the road?

Ans. It is close by.

Ques. Did you see Isaac Desha pass there that morning?

Ans. I did.

Ques. What direction was he going?

Ans. Towards Maysville.

Ques. Was there any one with him?

Ans. There was another gentleman along.

Ques. Do you recollect what description of clothing the stranger wore?

Ans. I did not notice him any way.

Ques. Do you recollect his horse?

Ans. I do not.

Ques. What time in the morning was it?

Ans. After early breakfast.

Ques. Are you satisfied that Desha was one of them?

Ans. I am.

Ques. Was you standing in the door?

Ans. I was in the room and the door was open.

Ques. Which of them rode next the house?

Ans. The stranger did.

Ques. You have no recollection of the clothing you say?

Ans. No I have not.

Ques. Were there but the two in company?

Ans. Only two.

Ques. Were there but the two horses?

Ans. Only two.

Ques. This you think was about a quarter of a mile on the Limestone road from Doggates?

Ans. I think it was about that distance.

Questions by Counsel for prisoner.

Ques. Had you resided at Allens?

Ans. I had.

Ques. Did you see any body else pass that day?

Ans. I do not recollect.

Ques. Were you standing in the door?

Ans. I was not.

Ques. Was the door shut or open through the day?

Ans. It was shut.

Ques. Did you see any body pass there the day before?

Ans. There were a good many who passed the day before, but I did not notice them.

Ques. Did you say that the door was shut all the day afterwards?

Ans. It was open about that time.

Ques. Do you recollect what you were engaged in when they passed?

Ans. I do not.

Ques. Do you recollect the particular business you were engaged in that morning?

Ans. I do.

Ques. Tell us what it was which enabled you to recollect the day of the month?

Ans. I do not, but know it was the second.

Ques. Are you in the habit of taking down the days of the month as they pass?

Ans. I do.

Ques. Had you seen Desha pass there before?

Ans. I had frequently before.

Ques. Tell us the day of the month that he passed before?

Ans. I have said what I know about it.

Ques. You say that you had been in the habit of taking notice?

Ans. I did not notice before.

Ques. What day did he pass?

Ans. I do not recollect.

Ques. Was he always alone or in company?

Ans. Sometimes alone, and sometimes in company.

Ques. Do you recollect of any occurrence which particularly drew your attention to the day of the month?

Ans. I do.

Ques. What was it?

No answer.

Ques. When were you after this first asked if you had seen Desha pass with a stranger, and who made the enquiry?

Ans. I do not know when, nor do I believe that any one asked me.

Ques. Did no one enquire of you?

Ans. No.

Ques. To whom did you first tell it?

Ans. To my own people.

Ques. How long after?

Ans. That morning.

Ques. Do you recollect which of them you told?

Ans. I believe it was my grandmother.

Ques. Did no one, some eight or ten days after enquire of you on this subject?

Ans. No.

Ques. Try and recollect?

Ans. I heard nobody say any thing about it.

Ques. Do you recollect what kind of clothing Desha wore.

Ans. I do not, nor do I recollect his horse.

Ques. You say you have seen him (Desha) pass before in company?

Ans. I have.

Ques. Do you not recollect what day of the month you saw him before?

Ans. I never noticed the day of the month before.

Ques. You stated the strange gentleman rode next to the house?

Ans. Yes.

Ques. Were they riding side by side,

Ans. Nearly so.

Ques. Which was before?

Ans. They were both even.

Ques. Did they halt?

Ans. No.

Ques. Is the road much travelled?

Ans. It is.

Ques. Was there any thing particular in their manner dress or gate?

Ans. No.

Ques. Your attention was not drawn to clothing horses nor any thing else?

Ans. No.

Ques. Endeavor to recollect if some person did not enquire of you, if you had seen Desha pass that morning?

Ans. No one did.

Ques. You say you told your grandmother?

Ans. Yes.

Ques. How came you to be summoned?

Ans. My Grandmother told Mr. McChord about it.

Ques. Did she tell him in your presence?

Ans. She did.

Ques. Did not McChord inquire of you?

Ans. No.

Ques. What day of the month did your Grandmother tell McChord?

Ans. I dont recollect.

Ques. What day was it?

Ans. Friday.

Ques. Was any body with McChord?

Ans. No one.

Ques. Was it the first, second, or third Friday after you saw Desha with the stranger?

Ans. It was the second Friday after.

Ques. What was McChord's given name?

Ans. William.

Ques. Was it William K. McChord?

Ans. It was Capt. McChord.

Ques. Did you give your Grandmother the information on the same day they passed?

Ans. Yes.

Ques. About what time?

Ans. Soon after they passed.

Ques. Do you recollect of any thing that induced you tell your grand mother?

Ans. I do not.

Ques. Do you recollect to have mentioned it at any other time?

Ans. I do not.

Ques. Might not your grand mother have seen them pass?

Ans. She said she saw them go along too.

Ques. What reply did she make when you told her.

Ans. She said she saw them pass.

Ques. Did your grand mother tell Capt. McChord in your presence that you saw them pass?

Ans. Yes.

Ques. Why did she not tell him that she saw them?

Ans. I dont know.

Ques. Do you recollect of having seen any person else pass that day.

Ans. I do. (the witness named some persons who had passed.)

Ques. Did any body else inquire since that time, about what you knew?

Ans. No one else.

Ques. Has no person since you came to this place?

Ans. No.

Ques. Nor at any other time but the first you mention?

Ans. No.

Ques. Did you look into the almanac?

Ans. No.

Ques. Did nothing take place in the family to cause you to notice that day as the 2nd of November?

Ans. Nothing.

Ques. Are you certain that it was the 2nd of November?

Ans. I am.

Ques. What relation is Mr. Allen of yours?

Ans. He is a brother-in law.

Ques. Did you live there?

Ans. I did.

Ques. When did you leave Mr. Allen's?

Ans. I left there on Sunday.

Ques. Do you recollect on what day of the month it was?

Ans. I do.

Ques. Will you tell what day of the month it was?

Ans. I dont know.

Ques. Did many persons pass along the road on Saturday, the day before you left home?

Ans. A good many.

Ques. Did you know any of them?

Ans. I dont recollect.

Ques. Were you sitting or standing when Desha passed?

Ans. I was standing in the house.

(Question by a Juror.—Do you recollect what day of the week the 2nd of November was?)

Ans. I dont recollect.

Questions by Attorney for the Commonwealth.

Ques. Did you see Desha pass there afterwards?

Ans. I dont recollect.

Ques. Are you not more in the habit of noticing acquaintances when they pass than strangers?

Ans. I am.

Ques. You knew Desha when he passed?

Ans. I did.

Ques. And that was the reason why you recollected of his having passed.

Ans. It was.

Ques. Have you known Desha for some time?

Ans. I have.

MILTON BALL, introduced and sworn.

Questions by attorney for the Commonwealth.

Ques. Tell all that you know about this matter?

Ans. One morning at my father's I saw a mare come trotting up the lane, I caught her, got on her and rode her back, and had not gone far before I met Isaac Desha's horse; I went still farther on and met Desha on foot; he had a pocket-book in his pantaloons pocket, I looked at it and told him he would loose it, he said there was no danger, I asked him what was the matter, he said he had cut his finger at Whitaker's; he got up and we had not gone far before he said he had lost his pocket-book; we went back with him and found it. His hand was bloody.

Ques. What color was the mare?

Ans. She was an iron grey color.

Ques. Had she a saddle and bridle on her?

Ans. She had.

Ques. Did you catch the mare?

Ans. I did.

Ques. How far did you go before you met Desha's horse?

Ans. About three or four hundred yards.

Ques. Had he a saddle and bridle on?

Ans. He had a saddle on, but no bridle.

Ques. Did you see any blood on the mare?

Ans. Yes, I saw blood on her neck and weathers.

Ques. What time did you see it?

At
Q
A
Q
A
Q
you
A
Q
his
A
Q
A
Q
A
him
Q
broth
A
Q
A
Q
A
Q
sha
A
Q
A
Q
A
and
Q
A
got
Q
A
Q
did

Ans. As soon as I caught her.

Ques. How far back before you met Desha?

Ans. About a mile and a half.

Ques. About a mile and a half from home.

Ans. Yes.

Ques. Did Desha have a pair of saddlebags when you met him?

Ans. Yes, he had a pair of saddlebags on his arm.

Ques. You say he had a morocco pocket-book in his breeches pocket?

Ans. He had, it was about half out.

Ques. You told him he would loose it you say?

Ans. I did, he shoved it in his pocket.

Ques. Did he get up behind you?

Ans. No, I got off, he got up, and I got up behind him.

Ques. How far did you go before you met your brother?

Ans. About half a mile.

Ques. Was he riding Desha's horse?

Ans. He was.

Ques. What did he do for a bridle?

Ans. He put one on him.

Ques. Was it after you met your brother that Desha lost his pocket-book?

Ans. Yes.

Ques. Then I suppose you all returned to look for it?

Ans. Yes.

Ques. Who found it?

Ans. Desha found it; I got down and picked it up and gave it to Desha.

Ques. What did Desha say about the horses?

Ans. I don't recollect, but I think he said they got away.

Ques. Did he say how they got away?

Ans. I don't recollect.

Ques. What did Desha say about the grey mare, did he say she belonged to him?

Ans. He did not say the mare was his, but took her and got on her.

Ques. Did he say how he got her?

Ans. I did not ask him how he got her.

Ques. Have you seen the mare since?

Ans. I have seen the one that is said to be her.

Ques. Where at?

Ans. At Flemingsburg.

Ques. Did you when you saw her at Flemingsburg, know her to be the same you caught?

Ans. I cannot say that she was the same.

Ques. Was she like her?

Ans. I did not notice her much; but she was a good deal like her, tho' the one I saw at Flemingsburg is more of an iron grey than I thought the other was.

Ques. What kind of saddlebags did Desha have?

Ans. I think they were about half worn.

Ques. Did they look any thing like these? (a pair of saddlebags were exhibited to the witness.)

Ans. I think they did, but they were not as full as they are now.

Ques. What kind of a pocket book was the one he had?

Ans. It was a red morocco pocket-book.

Ques. Was it large?

Ans. It was tolerably large.

Ques. Do you recollect what shape it was?

Ans. It was what I call a register; like a book tied with strings.

Ques. Does this look like it? (the counsel presented a red morocco pocket-book to the witness.)

Ans. This one is about the size, and shape of it.

Ques. Is this one, of the kind you call register.

Ans. It is.

Ques. What kind of clothes did Desha have on?

Ans. He had on a cloth roundabout.

took
 Ques. The pocket book you say was in his breeches pocket?

Ans. It was.

Ques. Did you notice at that time whether Desha had a whip?

r.
 Ans. I don't think he had a whip, if he had I did not see it.

Ques. You say he had no whip?

ings.
 Ans. I don't recollect that he had

Ques. Did Desha generally ride with a whip?

Ans. I have frequently seen him riding with one.

Ques. Do you recollect whether or not the mare had the reins of the bridle over her neck when you caught her?

was a
 ings-
 other
 Ans. They were over her neck.

ave?
 Ques. Do you know any thing about the lash of Desha's whip?

Ans. He left the lash at our house some time before.

a pair
 Ques. How long was it before?

s full
 Ans. I don't know how long it was.

Ques. How came the lash at your house?

e one
 Ans. Desha was there one day, and was cutting at the pigs in the yard, the lash came off and he left it there.

Ques. Is the lash at your father's now?

Ans. I think it is, but I am not certain.

Ques. Have you seen the place where it is thought the murder was committed?

ok ti-
 Ans. I have; I and my brother found the corpse.

Ques. How far is it from where you met Desha?

esen-
 Ans. About a quarter of a mile.

of it.
 Ques. How long was it after you met Desha before you found the corpse?

er.
 Ans. It lacked one day of a week.

Ques. How happened you to find it?

on?
 Ans. My brother had found a glove before, that had some blood on it, somewhere near the place, which we thought had been dropped by some person who

had been stealing hogs, and I had been that day at my brother's hawling corn, and as we were coming home when we got where the glove was found, we looked about to see if we could make any further discoveries; for it had been said in the neighborhood that there were hog thieves about, and while we were looking about we saw the body.

Ques. And that was the reason why you happened to look about at that place?

Ans. Yes.

Ques. How far was the corpse from the road?

Ans. About forty or fifty yards.

Ques. In what situation was the body when it was found?

Ans. It was lying with the arms and head under a log in a manner.

Ques. Did you when you first found the body proceed to examine what was the cause of its death?

Ans. I did not, we walked to the side of the hill and looked at it to see what it was, and went off and gave information to the neighbors immediately.

Ques. Was it the glove alone, that caused you to look for a murdered man?

Ans. No, I did not know any thing about a murdered man, I thought the glove had been dropped by some person who had been killing and stealing hogs.

Ques. You thought that some person had been killing hogs?

Ans. In the the knobs.

Ques. Did you come accidentally upon the corpse?

Ans. I had no thought of a dead man being there.

Ques. Was the glove found on the hand of the corpse a mate to the one your brother found?

Ans. I did not see the glove on the hand of the corpse, I did not help to take him up.

Cross examined by counsel for prisoner.

Ques. I think you state the mare was bloody?

Ans. She was bloody.

Ques. Whereabouts?

Ans. On her neck and weathers.

Ques. Was there much blood?

Ans. No great deal.

Ques. Did you mention it to Desha?

Ans. I think I asked him how the blood came on her; he said he had put his hand on her and his finger bloodied it.

Ques. Did it look like it had come in that way?

Ans. His finger seemed to have been bleeding.

Ques. Did his finger bleed then?

Ans. His finger was bleeding tolerably free?

Ques. Did you notice the rag?

Ans. I think his finger had been bleeding before; the rag was bloody.

Ques. How did you happen to take the road you did with the mare?

Ans. The mare looked that way and seemed to be scared.

Ques. Did the roads fork before you met the horse?

Ans. They did.

Ques. How far before you met the horse?

Ans. About three or four hundred yards.

Ques. After you met Desha's horse did the road fork before you met Desha.

Ans. It did not; the road to the mill afterwards comes in.

Ques. Is the road to the mill much travelled?

Ans. No, but few go that way; they generally keep on to the other fork.

Ques. When you saw Desha about to get on the mare you told him he would lose his pocket book, did you?

Ans. Yes; he gave it a push and got up.

Ques. You rode some distance, he lost the pocket book, you all returned and found it you say?

Ans. Yes; we turned back, Desha first saw it, and slipped off and picked it up.

Ques. Was there a string around it?

Ans. I think there was.

Ques. Did you state on the former trial that the pocket book you saw Desha have was one about the size of this one?

Ans. Such a one as that was shewn to me on the former trial, I stated I thought it some where about that size, and if this one was full now, there would not be much difference in the size, but I can't tell exactly.

Ques. Did Desha try to hide the pocket book from you?

Ans. He did not.

Ques. Did he not first find it, point to it and ask you to get down for it?

Ans. We saw it about the same time Desha pointed to it, and I got down and picked it up.

Ques. Would you not think his asking you to go back to hunt for it a bad way to hide it?

Ans. I think it would.

Ques. Are you sure Desha had a pair of saddle-bags?

Ans. I am sure he had.

Ques. Would you say positively he had?

Ans. Yes; I can venture to say positively that he had.

Ques. Did you say so on the former trial?

Ans. I said on the former trial I thought he had, but I was not examined closely on that point; I remember of having put my hands on them while I was behind him.

Ques. Are you able to say with the same certainty that he had no whip?

Ans. I cannot say about the whip.

Ques. Had you been along that road before?

Ans. I dont know unless we had been hauling corn along it.

Ques. Had you been at your brother's any time before?

Ans. I had.

Q: How long before. A: The week before we had been hauling corn. Q: Were you present when the glove was found. A: No. Q: Who found it. A: My brother. Q: Is he here. A: He is in Mason county.

Q: How old is he. A: About fourteen or fifteen years

Q: How long before had the glove been found. A: I dont know. Q: Had he told you of it. A: He had.

Q: How did you know that the glove was found at that place. A: My brother described the place where he had found it. Q: How long before was it that your brother told you. A: A day or two before. Q: Had you not passed that road since. A: Yes but did not go that way with the waggou. Q: Do you generally go one way and come another. A: We passed along the other road sometimes. Q: You say you had not gone far before you found it. A: We went I dont know exactly how far; we went about on each side of the road. Q: Was there any smell. A: None. Q: Did you discover any signs or marks. A: None. Q: Were there any buzzards or hogs about. A: None. Q: Was the dead body mangled by the buzzards or hogs. A: It was not. Q: Had your brother described the place where the glove was found so particularly that you could find the spot. A: I knew the place as described by my brother by a broken tree. Q: Is that road much travelled. A: Sometimes it is and sometimes it is not. Q: All those who did not go one

way, went the other did they not. A: I dont know.
 Q: Did you mention to your brother that you expected to find some dead hogs near that place because the glove had been found there. A: I think I did mention something about the glove. Q: Who were along with you. A: My brother and a negro man. Q: Had you gone that road with the waggon. A: No we came back that road with the waggon. Q: Had you been along there before. A: No, we went the other road on Saturday. Q: Where does the road take out from your father's. A: About 3 or 4 hundred yards from where the dead body was found. Q: Where do the two roads go to. A: They meet just by Doggate's; the left hand one goes by Clark's mill, the right hand one does not. Q: Where were you hauling corn to. A: To my brother's on the other side of Doggate's. Q: Does Doggate live between your father's and brother's. A: Yes. Q: Does this road cross the big main road. A: It crosses the Blue Lick road at Doggate's. Q: Which is the nearest way to your brother's from your father's. A: I dont know which is the nearest. Q: What do the neighbors say about it. A: I dont know. Q: Is it out of the way to go by Clark's mill and Doggate's. A: We dont go by Clark's mill. Q: Which is the straightest way to Doggate's. A: I dont know which is, there is a difference of opinion about it. Q: Which road did you return in. A: In the left hand road. Q: Do you know why you returned that road. A: I do not. Q: Did you not direct the negro which one to take. A: I gave no directions about it. Q: Why did you take the other road before; is one as good as the other. A: One is as good and as nigh as the other. Q: When informed that the glove was found, you thought you would look about the place to see if any body had been killing hogs there. A: When I happened there, from the

circumstance of the glove having been found there, thought I would look about and see what I could see.

Question. Did your brother carry the glove home?

A: He did. Q: Did it look like the glove of a man who had been killing hogs? A: It did I though

Q: Have you it with you? A: No, I have not. Q:

How often the week before were you at your brother's, the other side of Doggate's? A: I dont know

that I was there more than once. Q: did you stay

there all night? A: I did. Q: do you recollect

what day in the week it was? A: I think it was

Saturday. Q: you did not return on Saturday, you

say? A: no, I returned on Monday. Q. how many

loads did you haul on Monday? A: I don't know

how many. Q: were you at your brother's the

week before? A: no, I was there only on the Satur-

day I mention. Q: was y ur brother at home? A:

I don't know. Q: did he not work with you? A: he

does not work with me. Q: Is he older or younger

than you? A: he is older. Q: Is he generally at

home? A: sometimes he is, and sometimes not. Q:

was he at home the week before? A: he was part of

the time. Q: was he at home more than one day?

A: I dont know how long. Q: which one of your

brothers was with you when the corpse was found?

A: an elder brother. Q: you say the corpse was

found about forty or fifty yards from the road; was

it to the right or to the left? A: we found it about

forty or fifty yards to the left, going from home. Q:

why did you take that side when you went to hunt

for hogs? A: the road runs on the side of a hill,

and we thought we would look along, down there.

Q: you say it is sidelong? A: yes. Q: is that

your only reason for taking that side? A. that was

the only reason. Q. how far from your father's was

the corpse found? A: about a mile and three quar-

ters. Q: are you sure about the saddlebags? A:

yes, I laid my hand on them when I was riding behind Desha. Q: was your attention drawn to them in no other respect? A: no; only I laid my hands on them while I was riding behind. Q: From what you saw of them are you able to say that these are the same? A: I am not able to say whether they are or no. Q: was the place where the corpse was found open from the road? A: no; the corpse was lying by a log, the thighs were next to the road and the head down hill. Q: Was it on the side of the log next to the road? A: it was. Q: how large was the log? A: tolerably large. Q: was it large enough to hide the body on the other side? A: it was. q: was there not a more secret place lower down to hide it? A: not much, though I am not certain about it. q: was there not a sink below? A: there was. q: when you met Desha, did you see any thing extraordinary about him? A: his face was red, but I had seen it so before. q: was he confused? A: he did not seem so. q: where was your elder brother the week before? A: He was at home on Monday. q: where was he on Tuesday, Wednesday, Thursday and Friday? A: I dont know where he was any other day in the week, or night. q: was he at home at night? A: I don't know. q: do you sleep together? A: no. q: do you sleep in the same room? A: no. q: had your brother gone a journey? A: I cant tell. q: think and see if you can't? A: I have thought but I cant tell. q: how many brothers have you? A: nine. q: do you eat at the same table? A: we do. q: do you recollect of his being there at a single meal? A: I can't tell, he is sometimes gone a whole week. q: does he work on the farm? A: no. q: is he a tradesman? A: he is a Tobaccoist, and teaches school sometimes. q: had he a school engaged then? A: he did not teach school any last fall. q: was he at work in tobacco? A: he did not work at tobacco,

last fall nor this winter. q. nor in school? a. no.
 q. were you and he at home on 2nd November?
 a. we were. q. are you sure your brother was with
 you when you saw the mare coming up the lane? a.
 he was. q. what were you doing? a. I was hauling
 rails about the wood pile. q. was your brother help-
 ing you? a. no. q. are you certain that he was
 there? a. I think he was about home. q. had he
 slept at your father's the night before? a. I don't
 know, but he eat breakfast there. q. had you heard
 before this matter, of a pair of saddlebags having
 been found? a. I had not heard. q. did you hear
 of it before or after the corpse was found? a. I did
 not hear it before. q. when you found the corpse,
 how near did you go to it before you left it? a. we
 went in about five or six steps or more. q. did not
 your brother go nigher? a. no, neither of us. q.
 why not, there were two of you? a. It was the
 first dead person I had ever seen, and I did not like
 to go near. q. Had you never seen a dead man be-
 fore? a. No, I had not. q. Had you seen Desha
 pass with saddlebags at any time before? a. I have
 seen him pass with saddlebags. q. Do you recol-
 lect what kind they were; were they new or not?
 a. I don't recollect. q. Give some reason why you
 noticed the saddlebags that Desha had that day? a.
 I think he had a pair; I had never ridden behind him
 before. q. When you were returning with the crea-
 tures were you and your brother together? a. No,
 I first met Desha, we turned back and we met my
 brother. q. How far did you and Desha go before
 you met your brother? a. A quarter of a mile or
 more. q. Your brother was coming along the same
 road? a. He was. q. How far from your father's
 to the forks of the road? a. Nearly a mile the mill
 path turns off. q. Does not the road fork before
 that? a. It does not, only at the end of the lane.

q. When you found the corpse, did you discover no trail where the body had been dragged? *a.* No, we saw no sign of where it had been dragged. *q.* Had you turned out of the road before you found the corpse? *a.* Yes, we had turned out. *q.* You had turned out and saw no trail? *a.* Yes, and saw none. *q.* Was the corpse on the left side of the road? *a.* It was. *q.* When you started back with the mare did you see your brother again till you met him? *a.* I did not see him till I met him. *q.* Did you meet the horse? *a.* I did. (*Q by a Juror.*) Where did your brother catch him? *a.* He caught him at home.

Questions by the Counsel for the prisoner.

Have you had any conversation with any person on this subject? *a.* I have been frequently asked about it, I generally told a little of what I knew and turned off. *q.* Did you converse with any body last evening about it? *a.* I did. *q.* With whom? *a.* I don't know who particularly except Mr Crawford. *q.* You have seen the glove that was found, you say? *a.* I have. *q.* Was there any thing remarkable about it? *a.* It had some spots of blood on it. *q.* are you furnished with money to bear your expenses here? *a.* My father will pay my expenses. *q.* Has no other person furnished you with money? *a.* No other person.

Questions by the Attorney for the Commonwealth.

Was the glove bloody? *a.* It was. *q.* Was that the reason why you thought some body had been killing hogs? *a.* That was the reason. *q.* After you had discovered the dead body, was not your attention drawn to it so much, that you did not notice any thing else particularly? *a.* We just looked down the hollow and saw the dead body, we looked for no trail or any thing else. *q.* Speak of the whip Desha had at your house? *a.* It was very large. *q.* Was

it loaded? *a.* It was, it was the biggest kind of whip.

Questions by counsel for prisoner.

Had you passed the trail when you saw the corpse? *a.* We passed the trail before we turned out of the road. *q.* Had you not observed the trail at that time? *a.* I had not, it was shewn to me afterwards.

ELIZIMAN BALL, introduced and sworn.

Questions by the counsel for the Commonwealth.

State to the Jury what you have seen and know about this matter.

I saw my brother and a black man catch a grey creature at the end of my father's lane; my brother got on her and went back the road she came, he had not been gone long before a bay horse which I took to be Desha's came up, with a saddle but no bridle on, I put a bridle on him, and rode him back until I met my brother and Desha on the grey mare. I turned round and come on a piece with them, till Desha said he had lost his pocket book, when we all went back to look for it. *Q.* You knew the bay horse to be his. *A.* I thought it was. *Q.* What did he say about the grey mare. *A.* He said he had bought her. *Q.* How far did you go before Desha said he had lost his pocket book. *A.* Perhaps a quarter of a mile, but I didn't notice. *Q.* Did Desha have a pair of saddlebags. *A.* I paid no attention, I didn't notice any. *Q.* How far is it from where you met Desha to your fathers. *A.* About three quarters of a mile. *Q.* What kind of pocket book was it that Desha had. *A.* It looked like a red morocco pocket book. *Q.* Was it as large as this one. *A.* It was tolerably large. *Q.* Do you recollect whether or not Desha had a whip. *A.* I don't recollect of seeing him have one. *Q.* Might he not have had a whip. *A.* He might or he might not. *Q.* Have you seen the mare since that time. *A.* I

have seen the one said to be her. Q: Did that one resemble the one you saw Desha have. A: I cant say I would not swear to her. Q: Had she no appearance of the same. A: She had some appearance of the same. Q: Were they not both grey. A: They were both something of an iron grey. Q: Did you notice any blood on the mare. A: I shook hands with Desha but noticed no blood on her. q: Did you see Desha's finger bleeding. A: It looked like it was bleeding fresh. q: Did you see any blood on his clothes. A. I saw none. q Were you with your brother when the corpse was found. a I was with him. q How did it happen that you discovered it. a We were coming from my brother's who lives the other side of Doggate's, and when we got near the place where my brother said he had found the glove, we turned out of the road, saw something white and upon drawing near to it, we found it was a dead man. q Did your brother say any thing of his suspicion about the blood on the glove that was found. a I dont recollect. q Did he not say something about hog thieves. a There had been such talk, my father had said something about it. q Are you generally at home. a I am sometimes at this place and sometimes at home.

Cross Examined by the Counsel for the prisoner.

Were you coming from your brother's by Doggates when you discovered the corpse. a I was. q When did you go to his house. a I think it was on the same day. q Did you go on horseback or on foot. a On horse back. q What time in the day. a That morning. q What road did you go to your brothers. a Not exactly the same we came back. q Was it in the right or left hand road. a 'Twas to the right of the one we came. q Had you been to your brothers shortly before. a I dont know whether I had or not. q What business were you at, perhaps that

will enable you to recollect? A. I dont recollect what business I was at. Q. Were you there the Saturday before? A. I dont know. Q. Where were you on Saturday? A. I am not able to say. Q. Could you form an opinion of where you were that day A. I can form no opinion about it. Q. Where were you on Sunday? A. I expect I was at home. Q. Did you ride to your brothers on Monday? A. I rode in the waggon some and I walked some. Q. Did you ride back? A. Yes; with the waggon as I went. Q. *by a Juror*—Where were you on the Sunday night before? A. I started from home Monday morning with the waggon, I expect I staid there the night before.

Questions by the Counsel for the prisoner.

Do you lodge with your brother Milton generally? A. Not generally. Q. Well, have you lodged with him, say, from the 1st Nov. till this time? A. I have not. Q. Cant you form an idea of where you were the week before the corpse was found? A. I expect I was generally at home. Q. Were you at any of the neighbors? A. I expect it is very probable I was. Q. Are you certain you were not at your brother Silas's by Doggate's that week? A. I am not certain. Q. What was your general employment that week? A. I dont know what it was. Q. Two weeks before the Monday you mention, do you recollect what you were at? A. A good many things. Q. What do you usually follow? A. Why, I farm it some, work some in Tobacco, and teach school sometimes. Q. Tell us were you engaged in either of those three things, the three weeks before? A. I dont recollect what I was at or what kind of work I was doing. Q. Where were you the Tuesday before the corpse was found? A. I dont recollect every thing; I know I was at my fathers part of the day, some workmen were there. Q. What were the workmen doing at your fathers? A. They were

ceiling a room. Q. What were you doing the morning you caught the bay horse? A. I was talking with William A. Pepper. Q. Did Pepper see you catch the horse? A. Yes; he saw me lead him up. Q. When you found the corpse, had you and your brother turned out at any other part of the road to make an examination for hogs? A. I dont recollect, but we turned out about where we thought the glove was found. Q. What conversation did you have; was it about the glove and hogs? A. It might have been about that. Q. When you found the corpse did you go up to it? A. I went in about 5 or 6 feet of it. Q. You did not touch it then? A. No I stood awhile and looked at it and then turned off. Q. How far was the corpse lying from the road? A. About 50 or 60 yards. Q. Did you assist your brother Silas in pulling corn on the Saturday before? A. I dont recollect exactly, but I think I did help him to haul corn on Friday or Saturday. Q. Where did you go from when you went to your brother Silas's? A. From my father's I expect. Q. What was the reason you came that road on that day with the waggon? A. I dont recollect what it was. Q. Was it late in the morning when the horses came up? A. I think it was very early. Q. Was it in the forepart of the day? A. I took no particular notice of the time of day. Q. Were the workmen there at that time? A. I dont recollect whether they were or not. Q. Were they there that day? A. I think they were. Q. Who were they? A. William Wallace and Michael West. Q. Where were you the Monday night before the horses came up? A. Very probably at home. Q. Where were you the day before? A. I dont know. Q. What time of day did you find the corpse? A. In the evening. Q. Was it late in the evening? A. It was nigher sun-down than it was 12 o'clock. Q. How far is it from your

fathers to your brother Silas's? A. I dont know exactly. Q. How far is it called? A. I have heard it called four miles. Q. What time of day was it when you left your brother's to go home on Monday? A. I dont know exactly what time it was. Q. When did you go to Desha's for the bridle you put on his horse? A. I went the same day. Q. Did you see Desha? A. I did. Q. Did he have on the same clothes? A. He had on the same coat. Q. Were there any other persons at Desha's when you went for your bridle? A. James Bell, and Desha's brother were there. Q. When you discovered the corpse had you turned out of the road before you came to the trail? A. I expect we passed it before we turned out. Q. Had Desha a cloak or big coat on when you met him? A. I don't recollect whether he had or not.

BENJAMIN BALL, introduced and sworn.

Stated that on the morning of the 2nd of December he and his wife were at Mr. Piles's, that after breakfast when they were going home they met Isaac Desha, leading a creature; they stopped, Desha asked him what the mare he was leading was worth, he asked Desha how old she was, Desha told him she was seven or eight years old.

Questions by the Attorney for the Commonwealth.

Q. How long was this before the examining trial? A. it was some time. Q. was it not on the 2nd of the same month the trial took place? A. upon reflection I am mistaken about its being on the second December; it was on the 2nd November. Q. How far were you from your house when you met Desha? A. about a quarter of a mile. Q. was he going towards his house from yours? A. he was right on the road. Q. did you know one of the horses that Desha had, to be his? A. I knew one to be his. Q. did you inquire how he came by the other? A.

Being in a hurry I did not. Q. did he say he had purchased her? A. he said he had bought her. Q. what kind of a mare was she? A. She was a white speckled mare, I call it a grey. Q. which one was Desha on? A. I don't recollect which. Q. what time was it? A. It was after I had got my breakfast at Mr. Piles's, I think it was between breakfast and the middle of the day. Q. did Desha pass by your house the next morning? A. I don't know whether it was the next or the morning before, it was one of those mornings when he passed, I called to him and asked him for his workbench. Q. What time in the morning was it? A. It was before breakfast. Q. Was it on the morning you met him? A. No, it was not on the second of the month; it was either the morning before or after that, I don't recollect which. Q. Was it early in the morning when he passed? A. It was about light. Q. What course was he going? A. He was going towards Doggate's. Q. What kind of a horse was he riding? A. I don't recollect. Q. Did he tell you where he was going? A. He did not as I remember, I just asked him for his workbench, he told me I could get it, and rode on. Q. Had he a gun with him? A. I don't recollect. Q. Did not Elijah Pepper lodge at your house on the night preceding the morning Desha passed? A. I don't know, I did not see him. Q. Did you see the corpse? A. I did. Q. State to the jury what kind of wounds were on him? A. I think there were five, perhaps two on each side of the head, but we concluded that some insect had eat a hole in it, and in the jaw. Q. Was there a wound on the back part of the head? A. There was. Q. Was the head cut? A. The skin was cut. Q. What was the length of the cut? A. I cant say positively, it may have been two inches or more. Q. Was it the largest on the head? A. Yes. Q. How many

do y
besic
wou
you
some
A. Y
upon
in th
wind
find

W
that
Q. W
pear
thing
sion
A. N
to ge
first,
Q. he
him?
ward
much
long,
from
mile.
home
Q. w
help
know
the of
they
finish
his tir
and so
his en

do you say there were on the head? A. Four, three beside the larger one spoken of. Q. Were they the wounds of blows? A. They appeared so. Q. Did you discover any other wounds? A. None except some spots on the breast. Q. Was not his throat cut? A. Yes it looked like several strokes had been made upon it. Q. Did you see any appearance of a knife in the breast? A. No; there was a little hole in the wind-pipe. Q. How deep was that? A. I did not find its depth.

Questions by the Counsel for the prisoner.

Was this wound in the wind-pipe distinct from that in the throat? A. No, it was in the same place. Q. When you met Desha that morning, did he appear as usual? A. He did, I did not suspect any thing. Q. Did he manifest either agitation or confusion? A. No. Q. Had he saddlebags or a cloak? A. Not that I saw. Q. Were you not more anxious to get off than Desha? A. I bid him good morning first, and thought him more at leisure than I was. Q. How far from the end of your lane did you meet him? A. near the end. Q. did Desha go on toward home? A. I did not notice. Q. did you spend much time at Piles's? A. I cant say exactly how long, I was there after breakfast. Q. how far is it from your house to Piles's? A. about a quarter of a mile. Q. after breakfasting with Piles you went on home? A. in a few minutes, can't say precisely. Q. what days were your sons Elizman and Milton helping your son Silas about his corn? A. I don't know positively, Silas applied for help, and I think the other boys went on Saturday but did not finish, they returned home, and on Monday went back to finish. Q. does your son Elizman spend much of his time with you? A. he is at home sometimes, and sometimes works in this place. Q. what was his employment last October? A. I don't know.

Q: was he in your family the first week in November last? A: I don't know. Q: does not Desha frequently trade in horses? A: Yes. Q: did you and your wife go to Piles' the evening before? A: No we went that morning. Q: was your son Milton at your house that evening? A: I don't recollect every night that he is at home, but expect he was. Q: do you recollect Desha's dress when you met him? A: no I did not notice. Q: did you or not, dine with Desha that day? A: I was at his house in the evening, he asked me to dinner. Q: were there several persons there? A: Yes. Q: had he on the same clothes then, that he had on when you met him? A: I don't know. Q: did he say his finger had been cut? A: Yes he did; it bled some, I was there also the next day & he still complained of it. Q: was he apprehensive that he had cut an artery? A: he did not say so, I gave him directions to stop the bleeding. Q: did you see the body shortly after it was discovered? A: Yes I was there when it was moved at night. Q: did it smell unpleasantly? A: Yes. Q: was there the smell of corruption about it? A: I do not think there was; I had the corpse washed. Q: did you observe that the smell ceased after it was washed? A: It was not so bad, but I kept aloof from the body. Q: how far is it from your house to Desha's? A: about a half mile. Q: did you examine for the trail of the corpse? A: no, I was not there amongst the first. Q: had there been many there before you? A: yes. Q: did you see any marks of a scuffle there? A: no. Q: you did not discover any tracks you say? A: no, not at that place. Q: where then did you, and what kind of track was it? A: I saw a man's track where the pantaloons were found. Q: was it not the track of a plated heel? A: yes it appeared so, it was small, and I measured it. Q: what direction was the track from the pantaloons?

A: be
Q
W
A: ab
A: ye
and n
g: wa
Clark
g: In
taloor
or th
from
lead t
woul
yours
panta
q: Di
did no
or if
q: He
how
it ver
q: W
eveni
secre
to.
I can
gaged
neigh
How
a. I c
thirty
Q.
A. T
found
from
there
track

A: between them and the body.

Questions by Attorney for the Commonwealth.

What distance were the pantaloons from the body?

A: about a quarter of a mile. Q: was the coat found?

A: yes. Q: what direction? A: a little in the woods and nearly opposite a road cut out to Desha's mill.

Q: was the coat between the road you speak of, and Clark's mill road and nearer to your house? A: yes.

Q: In what direction? A: In the same with the pantaloons. Q: How far from the pantaloons? A: Two

or three hundred yards. Q: Pursuing the direction from the body to where they were found, it would

lead from your house and Desha's too? A: Yes it would. Q: Which lives nearest Doggate's, Desha or

yourself? A: I do. Q: Well what course were the pantaloons from the body? A: A north-east course.

Q: Did you examine elsewhere for tracks? A: No I did not examine where the coat was found, for tracks,

or if I did I saw none, it was about a stony branch. Q: How many tracks did you see? A: I can't say

how many, we measured the plainest one. Q: Was it very distinct or dim? A: It was a little dim?

Q: Was it not a rainy season? A: It had rained the evening before the search was made. Q: Was it a

secret place? A: It was a place not much resorted to. Q: What seemed to be the age of the track? A:

I can't say. Q: Were there a number of persons engaged in searching? A: Gen. Ried requested the

neighbors to look for the clothing and we did. Q: How far was the nearest track from the pantaloons?

A: I cant say exactly, but suppose some twenty or thirty steps.

Q: What seemed to be the direction of the track? A: The hill was steep where the pantaloons were

found, and it appeared like they had been thrown from above. Q: Were those the only tracks, were

there no horse tracks? A: I did not notice any horse tracks myself.

Questions by Counsel for prisoner

Did that track although it did not go to the pantaloons appear to be in that direction? A. It was not far from them, not more than fifteen or twenty steps.

Q. Although it had rained it was plain enough to see that it was a shod heel? a. It appeared to be a shod heel.

Question by attorney for the Commonwealth.

Did you see the print of the nails? a. No.

William Williams, next introduced and sworn.

Questions by attorney for Commonwealth.

Were you not at Doggate's on the 2d of November last? A. I was there all day making a hog pen.

Q. Did you see Desha and a stranger leave Doggate's that morning? A. I was at the pen which is 30 or 40 yards from the house, and saw Desha and a gentleman ride from Doggate's and I saw them riding on about 300 yards.

Q. What kind of horse and coat had the stranger? A. He rode a grey creature and wore a cloak.

Q. Did you see them long? A. Only from the time they started until they rode out of sight.

Q. What course were they going? A. Toward Limestone.

Q. Towards Allen's? A. Yes.

Q. How far from Allen's were they when you last saw them? A. Not far, perhaps in sight.

Q. How far from Doggate's to Allen's. A. About a quarter of a mile.

Cross Examined.

Q. You saw them start together did you? A. Yes.

Q. Was not Desha a little before when they started? A. I dont think he was.

Q. And you looked at them 300 yards? A. Yes.

Q. Might they not have been farther apart than the length of this house? A. I dont know.

Q. How far were you from the house? A. Thirty or forty yards.

Q. Is it a public road?

A: I
passi
er pe
you
caus
acqu
so.
yard
on a
from
in fr
you
know
for I
q: W
to fi
it af
was
you
who
the
q: I
day
Mr.
reac
far
know
ed y
eye
four
or d
was
Me
off
the
wh
but

A: Yes. Q: Are there not a great many people passing it? A: Yes. Q: Did you look at any other persons as long? A: No. Q: What reason had you for looking at Desha thus far? A: Only because I knew him. Q: Are you more apt to look at acquaintances than strangers? A: Yes; a little more so. Q: You are pretty certain that they rode 300 yards together? A: I am. Q: You were at work on a hog pen were you? A: Yes. Q: How far from the road? A: Close by. Q: Was your face in front of the road? A: Yes. Q: What caused you to fix on the 2d of November. A: Because I know when I commenced and how long I worked for Doggate. q: Did you keep an account? a: Yes. q: Was it from looking over it that you are enabled to fix on the day? a: Yes it is. q: How long was it after they passed before it occurred to you? a: It was sometime after before I thought of it. q: Did you name it then? a: I expect I did. q: To whom do you recollect of having first communicated the circumstance of their passing? a: To nobody. q: Did you know any other persons who passed that day? a: I expect I did. q: Who were they? a: Mr. Whitaker, I think. q: Did he travel the same road with Desha? a: I did not notice him. q: How far did you see him travel that road? a: I don't know. q: Can you think of any thing which fastened your attention on Desha and the stranger? a: My eye was not fixed on them. q: After the corpse was found, who enquired of you about what you knew, or did you tell any body. a: The first I heard of it was from John McChord. q: Did you then tell McChord that you saw Desha and the stranger go off together? a: I did. q: Were you examined at the former trial? a: No. q: Was it known then what you knew? a: I was in possession of the fact but did not wish to be called on. q: Since that ex-

amination has any one called on you for what you knew? *a*: Yes. *q*: Who was it? *a*: Several that saw me at work asked me, and I told them. *q*: But what person conversed with you to find out? *a*: Doggate. *q*: Was there any other? *a*: Not that I recollect of. *q*: How many days did you work at Doggate's? *a*: I could tell from my statement, but cant recollect. *q*: Had you been at work there before? *a*: Yes. *q*: Did you work by the day? *a*: Yes. *q*: How long did you work for Doggate then? *a*: Two or three days. *q*: Did you go home then? *a*: I did. *q*: Are you sure you did not set in on Monday, but Tuesday? *a*: I am sure it was on Tuesday. *q*: What enabled you to ascertain the day and date? *a*: Because I commenced work that day for Doggate. *q*: Did you enter your services in an account? *a*: When I work for a man I keep an account of it. *q*: Did you enter it on your book as Tuesday the second of November? *a*: It was Tuesday the second of November. *q*: Did you ascertain that Tuesday was the second, from your account? *a*: As I do a days work I set down the day and date. *q*: Did you make an entry of that day and its date? *a*: I did. *q*: Did you enter it on a piece of paper or in an account book? *a*: On a piece of paper. *q*: Was it by reference to the entry that you ascertained it was on Tuesday the second of November? *a*: I know it was that day. *q*: Did you tell the person who enquired of you that you did not know the day, and that you would refer to your account? *a*: I don't recollect. *q*: Did you see Desha afterwards? *a*: No. *q*: Did Doggate keep an account of your work? *a*: I expect he did. *q*: Have you and Doggate settled your accounts? *a*: No. *q*: Not since second November? *a*: No. *q*: Has he seen your account? *a*: I don't know that he has. *q*: Has any other person seen it? *a*: I dont know. *q*: Was it from an

exam
certai
How
at wo
at wo
colle
break
two
were
famil
with
Davi
q: D
but
Only
do.
or fi
thin
a:
Did
side
goin
q: I
tion
the
and
hot
wa
rel
yo
be
ad
a.
q.
a.
as
st

examination of your entry that you are enabled to as-
 certain the day? *a.* I know that was the day. *q.*
 How were you engaged the week before? *a.* I was
 at work for Doggate part of the time. *q.* Were you
 at work for him on Tuesday before? *a.* I dont re-
 collect. *q.* Who was at Doggate's that morning at
 breakfast? *a.* Some waggoners I believe, there were
 two waggons standing in the yard. *q.* How many
 were there? *a.* I don't know they eat before the
 family, and I was called with the family. *q.* Who eat
 with you and the family? *a.* No person I think but
 Davis. *q.* Were you there early? *a.* Yes by sun up.
q. Did you know any body else there? *a.* None
 but Desha. *q.* Were there but two waggons? *a.*
 Only two. *q.* Do you know George Burress? *a.* I
 do. *q.* How long have you known him? *a.* Three
 or four years. *q.* Was he there that morning? *a.* I
 think he was. *q.* Did you know any body else there?
a. A good many were passing, Sullivan passed. *q.*
 Did you see Baker come up. *a.* No. *q.* On which
 side of the house is the hog pen? *a.* On the right
 going to Limestone. *q.* Was it in a hollow? *a.* No.
q. Did any body attempt to brighten your recollec-
 tion except Doggate? *a.* Yes. *q.* Before or after
 the trial at the examination Court? *a.* Both before
 and after. *q.* What time did Sullivan go toward the
 house? *a.* Pretty early, he was walking. *q.* What
 was the color of Burrows's horse? *a.* A kind of sor-
 rel; though he trades in horses. *q.* Who furnished
 you with money to bear your expenses here? *a.* I
 bear my own expenses, there has not been one cent
 advanced me. *q.* When did Sullivan leave there?
a. I can't say when either he or Burrows left there?
q. Where had McChord been when he saw you.
a. To Clark's mill, in returning I saw him and he
 asked me if I had heard of the murder. *q.* Did he
 say who was suspected? *a.* No. *q.* Was it the man

who left Doggates with Desha that was killed? *a.* I don't know. *q.* Have you been promised your expenses? *a.* No, I have not. *q.* Have you not purchased leather from Desha? *a.* I have. *q.* Did you enter it in a book. *a.* Yes. *q.* When did you get it? *a.* I went for it on Friday, Desha was not at home, but I got the leather. *q.* Was it the Friday before the second of November? *a.* No the Friday after.

And the Court adjourned till tomorrow morning nine o'clock.

FRIDAY, JANUARY 21st, 1825.

Met pursuant to adjournment.

JOHN BECKLEY being sworn, stated;

That he had seen the corpse, that he recognized it to be Francis Baker of Natchez, whom he well knew; he also stated that he examined the body and wrote to Baker's brother-in-law, after which he saw Desha at General Ried's, and had a conversation with him, in which Desha remarked that he was in an awkward situation as that was the corpse of the man with whom he started from Doggate's; the witness observed that Baker was a friend of his, when Desha said the deceased enquired of him whether he knew him (Beckley.) Desha further stated that he rode with Baker about two hundred yards, when he turned off and had not seen him since.

THOMAS McCARTY, introduced and sworn.

Questions by attorney for Commonwealth.

Q. Did you find a bridle, where and when. *a.* I did find one on Wednesday between Johnson's fork and Benjamin Balls. *q.* Was it the Wednesday before the dead body was found. *a.* Yes. *q.* Is this the same. *a.* I think it is. *q.* Where was the corpse

foun
foun
q. H
the t
Mak
yard
you
dirt
acqu
ly be
brid
brid

C
fou
was
been
wh
A:
Q:
A.
the
bod
Q:
tria
I c
A:
by
nei
Q.
day
par
fou
12
the
ro
me

found. *a.* I have been by the place since it was found, it was some distance from the road in a hollow.

q. How far from where the body was found did you find the bridle. *a.* I can't say, though it was not far. *q.*

Make some estimate. *a.* Not more than forty or fifty yards, if so far. *q.* How was the bridle lying when you found it. *a.* It was lying in the road with some dirt on it, as if it had been trod on. *q.* Was you well acquainted with Desha. *a.* I had seen him frequently before. *q.* Had your attention been directed to his bridle previously. *a.* I have seen Desha ride with a bridle which resembled this.

Questions by counsel for prisoner.

Q: Having seen the place where the corpse was found, in what relation to it did the bridle lay. *A:* It was in the road where the murder was said to have been committed, thirty or forty yards off. *Q:* In what direction did that road lead from Doggate's? *A:* It was to the left of the main road to Limestone. *Q:* Was the bridle between Johnson's fork and Ball's? *A:* Yes. *Q:* Was the bridle in the road opposite the corpse. *A:* I dont think it was. *Q:* Was the body lying square off from the road. *A:* Nearly so. *Q:* Do you recollect of having stated at the former trial that the bridle was opposite the body. *A:* No I do not. *Q:* The bridle was in the road was it? *A:* Yes; it was a horseway and travelled sometimes by waggons. *Q:* Is it travelled much. *A:* It is a neighborhood way, travelled backward and forward. *Q:* You had passed it yourself before. *A:* Yes the day before. *Q:* Were you alone? *A:* No in company. *Q:* What number were with you? *A:* Three or four. *Q:* What time in the day was it. *A:* About 12 or may be after. *Q:* Did you see the bridle then. *A:* No. *Q:* How far had you travelled that road, where to, and for what. *A:* I was going to meeting the others were going on the North Fork.

Q. How far from where you found the bridle, to your house. A. About 4 miles. Q. You having seen the place where the corpse was, did you see any thing of it on Tuesday. A. No: I saw nothing like it, trail nor any thing else. Q. Name the gentlemen who were with you. A. Wm. & John McChord & Samuel Hunter. Q. Do you live on the end of the road toward Maysville. A. I live on the road from the Blue Lick to Flemingsburg. Q. Did you return home on Tuesday. A. No not till Wednesday. Q: Where did those gentleman fall in with you. A. On my return home. Q. Did the McChords start from their father's. A: Yes we all started together. q Do you think it was not as late as one o'clock. a It was somewhere about twelve or one, for we looked at the watch before we started. q. How far is it from old Wm. McChord's to the place where the bridle was found. a Perhaps three miles and a half, or it may be more. q Did you travel slowly. a Yes not out of a walk, we were talking. q Did you pass Benjamin Ball's place. a Yes we went through his lane. The witness was told to lay the bridle in the posture in which it was when found; throwing it down carelessly he said it was apparently in that way in the road. q Was it in a heap. a Yes. q Was there a throat latch to it then. a I don't recollect.

Questions by the counsel for the Commonwealth.

Q. Did I understand you that the bridle appeared to have dirt on it as if rode over. a It appeared like it had been rode over, there was a little dirt on it. q Do you not think it would be possible for you to have travelled that road the day before, without having seen the bridle. a It is very probable. q You were in social chat were you not. a Yes, and riding side by side when the road admitted. q You were not attending to any particular object were you. a

Not
strai
The
wag
wh
a It
gate
was
road
reco
der.
besi
of t
Nar
Mc
q D
a V
the

alo
a Y
had
I s

to
ne

wh
q
lec
w
di
at

Not more than usual. *q* State whether the road was straight or crooked where the bridle was found. *a* There were two tracks, one around, which admits a waggon, the other is a horse way. *q* Is the place where the body was found square off from the road. *a* It is off to the right. *q* Was the bridle nearer to Doggate's or Ball's from the point where the murder was committed. *a* I can't say. *q* Which end of the road from the body did you find the bridle. *a* I don't recollect. *q* Who shewed you the place of the murder. *a* One of the young Ball's. *q* Who was there beside Ball. *a* Several, perhaps thirty. *q* Which of the Ball's shewed you the place. *a* Milton. *q* Name some of the others that were with you. *a* Wm. McChord, Samuel Huff, Nathaniel Chandler, &c. *q* Did you shew them where you found the bridle. *a* We went and examined but I could not point out the very spot.

Questions by the Counsel for the prisoner.

Q You say that you were conversing when riding along, in returning were you not riding as usual. *a* Yes. *q* How did you discover the bridle. *a* I had occasion to get down, and as I turned to get up I saw it. *q* Immediately in the track. *a* Yes.

Questions by attorney for the Commonwealth.

Q What did you do with the bridle. *a* I took it to Doggate's and left it there. *q* Where did you next see it. *a* In Flemingsburgh.

Questions by counsel for prisoner.

Q Do you pass Doggate's in going home from where you found the bridle. *a* I went that way then. *q* when you picked up the bridle, had you any knowledge of it. *a* I thought that I had seen Desha ride with such a one. *q* When you left it with Doggate did you tell whose you thought it was. *a* Doggate and myself concluded that it was Desha's bridle, and

thought we would drink a little grog upon the strength of it. *q* Did you pawn it. *a* We said we would drink a half a pint, and said that if it was Isaac's he would be glad to get it.

DAVID BROWN, introduced and sworn.

Questions by the Attorney for the Commonwealth.

Look at this bridle and see whether it is the same which you saw at Doggate's. *a* As well as I recollect I think it is the same. *q* When did you see it there. *a* On Tuesday the 9th of November last. *q* Had you any conversation with Desha on that day. *a* On that evening riding with him I mentioned the consequences of such a deed and told him that he was suspected, Desha said that he was clear and could make his innocence appear. I asked him if he had lost a bridle, he said he had, I then described the one at Doggate's and he replied that it was his. *q* Did you describe the bridle particularly. *a* As near as I was able. *q* He replied that it was his did he. *a* Yes. *q* Did he say how he had lost it. *a* No not a word.

Questions by the Counsel for the prisoner.

Who showed you the bridle at Doggate's. *a* Mrs Doggate. *q* Did she tell you whose it was. *a* No. *q* Did she pretend to know. *a* No. Did you converse with Doggate about it. *a* He was not at home just then, but came after a little. Desha also stated that they started from Doggates together, or rather that he overtook Baker at the well, rode on with him to Doggate's stacks when he turned off; and Baker rode on.

Questions by the attorney for the Commonwealth.

How long from the first conversation was this. *a* In the same. *q* How far are the stacks from the

house. *a:* Two or three hundred yards. *q:* Are the stacks between Doggate's and Allen's. *a:* They are nearer Doggates than Allens. *q:* Do you recollect whether the stacks are in sight of Doggate's. *a:* I rather think they could be seen from Doggates yard

Questions by the Counsel for the prisoner.

When you conversed with Desha did you discover any agitation in him. *a:* It was after night I discovered no agitation nor change in the voice. *q:* Did you go to Moore's to enquire about the stranger's horse. *a:* No I did not, but saw others go that way. *q:* Did you converse with Moore on that subject. *a:* No. *q:* Do you recollect the names of the gentlemen who went to Moore's. *a:* Mr. Chancellor was one and Eli Anderson another. *q:* Did you go to Col. Pickett's after Desha. *a:* Yes, I went there in the evening for Desha to return to his neighborhood. *q:* Did you discover any agitation. *a:* He did not seem embarrassed. *q:* Did the conversation you speak of, pass that evening. *a:* Yes.

Questions by Attorney for the Commonwealth.

Had any person accosted him on the subject before you. *a:* I do not know. *q:* Did you give him any intimation of your object. *a:* No, we barely requested him to return home which he did in a gentlemanly manner. *q:* How far had you proceeded before you told him that suspicion rested on him. *a:* A mile and a half or two miles. *q:* Did he appear astonished. *a:* No, he was cool and deliberate. *q:* Did Desha enquire of you about your object in wanting him to return to his neighborhood. *a:* No. *q:* Did he make any enquiry of you. *a:* No, I named the subject to him.

Questions by prisoner's counsel.

You had been told that a murdered man had been found and you wanted him to go to his neighborhood.

a: Yes, I told him so, and he said he would go without hesitation.

Questions by attorney for Commonwealth.

What time in the night was it when you left Col. Picketts. *a:* Early, seven, eight, or nine o'clock.
q: Have you any knowledge of the mare. *a:* No.
q: Did you see her at Pickett's or in town. *a:* No.

ELIJAH PEPPER, called.

Question by the Court—What is your age.

Answer—Sixteen.

He was sworn—Questions by the Attorney for the Commonwealth.

Were you at Benjamin Ball's about the first of November and if so, state what conversation, if any, you heard between any persons. *a:* I was at Ball's about the first of November, the next morning about light Mr. Ball asked Desha for the use of his workbench. *q:* Did Desha reply. *a:* Yes, he told him that he could get it. *q:* What time in the morning was it. *a:* It was just getting light.

Question by the Court—What morning was it.
a: On Wednesday morning.

Questions by attorney for Commonwealth.

Had you been there all night. *a:* Yes. *q:* Did you see them in conversation. *a:* No. *q:* Where were you. *a:* In bed. *q:* What was your business at Ball's. *a:* I went there to get Milton Ball to help us in treading out wheat the next day. *q:* Do you recollect what business you were engaged in the evening before. *a:* No. *q:* Did Milton Ball go with you the next day. *a:* Yes. *q:* Are you satisfied that it was on Wednesday morning. *a:* Yes I am. *q:* Is there any circumstance which enables you to recollect the day particularly. *a:* Nothing particular. *q:* Had you been treading out wheat before. *a:* No.

Questions by counsel for prisoner.

Did it rain that Tuesday evening. *a.* I dont recollect. *q.* Tell us how you found out that it was on Tuesday evening you staid at Ball's. *a.* I recollect it was that night and Wednesday morning. *q.* Had you conversation with any one on the subject. *a.* Not that I recollect. *q.* How long before you were enquired of. *a.* Not till the trial at Flemingsburgh. *q.* How was it known that it was necessary to take you to Flemingsburgh. *a.* I dont know why. *q.* When at that trial did you recollect it. *a.* Yes. *q.* Did you then recollect that it was Tuesday night. *a.* Yes. *q.* Where were you the Tuesday before. *q.* I dont know. *q.* Well the Wednesday before. *a.* I dont recollect. *q.* Where were you this day two weeks. *a.* I dont know. *q.* How then do you know that it was on Tuesday night. *a.* Because Milton Ball and myself went over to a neighbors that evening. *q.* Have you not been at Mr. Ball's on other evenings. *a.* Yes. *q.* What nights or days. *a.* I dont recollect. *q.* Well any day before. *a.* I dont recollect particularly. *q.* Why do you recollect this night particularly. *a.* Because it was the last night I staid there. *q.* Are you certain that nobody had conversed with you before you went to Flemingsburgh about it. *a.* I had named it. *q.* Was it not common for you to be at Ball's. *a.* Yes. *q.* Are you and Ball connected. *a.* No. *q.* You are only neighbors. *a.* That is all. *q.* Who first spoke to you and asked you if you heard this conversation. *a.* I cannot recollect that any one ever did. *q.* What made you recollect that conversation. *a.* Nothing more than common. *q.* Was not the Wednesday too wet to get out wheat. *a.* We did get out wheat that day. *q.* Did you tread wheat in the barn or on a treading floor. *a.* On a stack yard floor. *q.* May you not be mistaken about the day. *a.* I recollect

the morning. *q* You recollect that it was wednesday
a Yes. *q* Was it the first or second week in November.
a I don't recollect the day of the month. *q* Do you recollect what you were about the Monday before.
a No. *q* Had you tread out wheat before. *a* Yes.
q Do you recollect what day. *a* No I dont. *q* Had you help then. *a* I dont recollect.

Questions by the counsel for the Commonwealth.

Are you satisfied that the night you staid at Ball's was the night before you tread out wheat. *a* I am.
q Are you satisfied that it was not on Sunday night that you staid at Balls. *a* Yes, I am satisfied that it was on Tuesday night.

Questions by counsel for prisoner.

Do you recollect where you were on Sunday.
a No. *q* Might it not have been on Monday night.
a No. *q* Who slept with you. *a* Milton Ball.
q Was Eliziman Ball asleep. *a* I cant say. *q* Did you see him that night. *a* I dont recollect that I did
q How far is Ball's house fr m the road. *a* About 20 steps. *q* Was the room in which you slept a close one. *a* Tolerable close. *q* How did you know it was light. *a* I was just getting up. *q* Are you certain it was just light. *a* Yes. *q* Was it up stairs. *a* Yes. *q* Could you see all about you. *a* It was just tolerable light.

WM. A. PEPPER, introduced and sworn.

Questions by the Attorney for the Commonwealth.

Q Have you a recollection of the time you got out wheat when young Ball assisted you. *a* I have; it was on the third day of November last, the evening before, I sent my little son over to Mr. Ball's to get some assistance; my son staid all night there. *q* What were you engaged in the day before. *a* I went to see Mr. Ball on that day, but he was not at home,

and in
 Ball th
 said th
 Ball.
 mornin
q Was
 Yes.
a Yes
 came
 had oc
 ed to t
 which
 view v
 isfied
 horse
 was D
 G
 How
 Elizim
 exactl
 Had y
 mornin
 home.
 the on
 level.
 or sixt
 lane.
q How
a Abo
 You v
 reason
 engage
 Y u h
 dont r
 third
 liver v
 recoll

and in the evening I sent my son. *q* Where was Ball that morning. *a* I don't know but the family said that he was at Piles's. *q* Did you see Elizman Ball. *a* Yes, he was there. *q* What time Tuesday morning did you go to Ball's. *a* About ten o'clock. *q* Was that the evening you sent your son down. *a* Yes. *q* Was it the next day that you got out wheat. *a* Yes. *q* Were you at the house when the horses came up. *a* No, after walking a piece up the lane I had occasion to step aside, and did so, when I returned to the road, I saw Elizman Ball leading a horse which I took to be Desha's. *q* This was in your view was it. *a* Yes, from the road. *q* Was you satisfied that it was Desha's horse. *a* I had known the horse for some years, and thought at the time that it was Desha's.

Questions by the Counsel for the prisoner.

How far were you from the house when you saw Elizman Ball leading Desha's horse. *a* I can't say exactly, but suppose it was fifty or sixty yards. *q* Had you seen both Elizman and Milton Ball that morning. *a* Yes. *q* Did you leave them both at home. *a* Yes. *q* Did you see no other horse than the one which Elizman led. *a* No. *q* Was Ball's lane level. *a* Tolerably so. *q* When you had gone fifty or sixty yards could you not see the whole of his lane. *a* I could see to the end towards Doggate's. *q* How far is the mouth of the lane from Ball's house. *a* About one hundred yards or such a matter. *q* You were treading out wheat you say, is that the reason why you recollect the day. *a* I had made an engagement to deliver wheat during that month. *q* You had tread out wheat before, when was it. *a* I don't recollect. *q* You recollect that that was the third of the month, because you had engaged to deliver wheat. *a* I have told you the day. *q* Do you recollect the day on which you delivered the first

wheat. *a* No. *q* Why then are you able to recollect Wednesday better than the day on which you delivered the first. *a* I told you that it was the 3rd. *q* Do you know of no other reason why it was the third, except that you had a contract to deliver wheat. *a* It was the third, for the second I was at Ball's the first of the month being Monday. *q* This day has been the subject of reflection with you has it. *a* I recollect it without any difficulty. *q* Are you able to say what day of the month the first Wednesday in December was. *a* I could tell you if I had an almanac. *q* Have you looked at the almanac as to the third day of November lately. *a* No. *q* You are sure it was the third. *a* I am. *q* Is Piles's in sight of Ball's. *a* It would be if it was not for the hills. *q* How far are they apart. *a* I don't know the distance. *q* Did you not expect Ball back. *a* I did not ask. *q* Did it occur to you to send for him. *a* I did not wish to put him to that much trouble. *q* Do you recollect when and with whom you had the first conversation in relation to third of November. *a* I don't recollect any thing about it. *q* Did you converse with no one about it. *a* No. *q* With none of the Balls. *a* No. *q* Were you examined before the Grand Jury. *a* Yes. *q* As to the same fact. *a* Yes. *q* How was it known that you were in possession of the facts. *a* I don't know. *q* You did not know what you were summoned for. *a* I don't know that I did, I merely stated what I knew. *q* Do you recollect the day, and the day of the month that you were before the Grand Jury. *a* I don't just now.

Questions by attorney for the Commonwealth.

Q. Repeat what you said in relation to Elizman Ball catching Desha's horse, and where you were. *a* After walking a piece up the road I had occasion to step aside, when I returned to the road I saw Elizman Ball leading a horse by the mane which I took

to be I
call of
sent fr
Then
leading

NAT

Q

Q.

the gr
comm
on the
in sea
whip
we sta
where
ted, W
and it
was fo
the fr
I kno
found
a On
Wha
and g
K. N
head
Chor
a Ye
a roa
foun
with
road.
q Do
such
as is

to be Desha's. *q* Did you leave the road to obey a
 call of nature. *a* I did. *q* How long were you ab-
 sent from the road. *a* Ten or fifteen minutes. *q*
 Then after returning to the road you saw Elizman
 leading the horse. *a* Yes.

NATHANIEL CHANDLER, *introduced and
 sworn.*

Questions by Attorney for the Commonwealth.

Q. State whether you found a loaded whip near
 the ground where the murder is said to have been
 committed. *a* Some gentlemen came to my house
 on the 14th November and asked me to go with them
 in search of articles, observing that the lead of a
 whip had been found since the body was discovered,
 we started out, and when we got about the place
 where it was thought the murder had been commit-
 ted, William K. McChord found the cap of a whip,
 and in fifty or sixty yards from the place where it
 was found, I picked up other fragments. *q* Are these
 the fragments which you found. *a* A part of them
 I know, but others I do not, some little of it when
 found is not here. *q* On what day did you find it.
a On Sunday the 14th, after the body was found. *q*
 What did you do with it. *a* I started home with it
 and got as far as my brother's in law, when William
 K. McChord sent for it and I gave it up. *q* The
 head of the whip was found in your presence by Mc-
 Chord was it. *a* Yes. *q* Near the edge of the road.
a Yes not far off, there was a log lying on the ground,
 a road run on each side of it, and in scraping we
 found it. *q* Have you not noticed Desha riding
 with a whip. *a* I have seen him frequently on the
 road, and have noticed him sometimes with a whip.
q Do you recollect that the whip he rode with was
 such a one as this. *a* It was a large whip. *q* Such
 as is called a loaded whip. *a* Yes. *q* How far was

It from the spot where the murder was committed.
a Fifty or fifty-five yards. *q* Were you along with
 McCarty when he shewed the place where he found
 the bridle. *a* I was along with him the same day
 but did not learn from him the particular place.

Questions by counsel for prisoner.

Q. Are these fragments of the whip as they were
 when you found them. *a* Not entirely, part of them
 is more shattered now, than they were then. *q* Is
 there no other alteration. *a* Not that I perceive.
q You say the cap was found in the road. *a* Yes.
q Was the whip lying concealed or openly. *a* It
 was not concealed. *q* Was it on top of the leaves in
 plain view. *a* Yes. *q* Was there any thing with it.
a No. *q* Did you notice the trail. *a* The ground
 had been a good deal trampled before, I could not
 tell so well. *q* This was the Sunday after the body
 was found was it. *a* Yes. *q* Did you find any thing
 else. *a* A hat was found on the same day, I saw it
 just after it was found. *q* Who picked up the hat.
a Samuel Love. *q* How far from the road. *a* I can't
 say exactly, but somewhere about fifty yards.

Questions by Attorney for the Commonwealth.

Q. Look at the fragments of this hat, and see whe-
 ther it is the same then found. *a* This is what
 was found. *q* Was there any blood on the hat when
 found. *a* I can't say that I saw any. *q* Is this the
 same cap which was then found. *a* I think it is, tho'
 it is not precisely like it was.

Question by counsel for prisoner.

Q. Was the hat concealed when found. *a* I did
 not see it until it was picked up.

JOHN McCHORD, introduced and sworn.

Questions by attorney for the Commonwealth.

Q. State what you know about the matter. *a* I
 dont know much about it any way; the day after the

body
 to see
 but f
 much
 ny p
q Do
 the s
 was i
a in
 there
 this
 kept
 prod

D
 on t
 the g
 Afte
a W
 went
 turn
 foun
a No
q H
 had
 few
 in th
 mid
Q
 Is
 elled
 not

H
 see
q D
 on it

body was found I went in company with my brother to see if there were any signs of blood on the ground, but found none; the place however had been very much trodden. *q* State whether you there found any part of a whip. *a* I found the lead out of a whip. *q* Does this look like the same lead. *a* I think it is the same. *q* How far was this from the road. *a* It was in the road. *q* In the edge or middle of the road *a* in the middle. *q* what time in the day were you there. *a* In the afternoon. *q* What did you do with this lead after it was found. *a* I took it home and kept it until the trial at Flemingsburgh, and there I produced it. *q* Is this all you know about it. *a* Yes.

Questions by counsel for prisoner.


Do you say that it was in the middle of the road on top of the ground. *a* Yes. *q* Was it sunk in the ground. *a* No, there were leaves about it. *q* After finding the lead did you look for any thing else. *a* We did. *q* How far around. *a* Not very far, we went once about one hundred yards around and returned. *q* This was the day after the body was found, was it. *a* Yes. *q* How long did you remain. *a* Not long. *q* Did you discover many signs. *a* No. *q* Had not the road been much trodden. *a* There had been a good many about the body, though but few where we picked up the lead. *q* It was not sunk in the ground. *a* No. *q* You say it was in the middle of the road. *a* Yes.

Questions by the attorney for the Commonwealth.

Is that road much travelled. *a* It is smartly travelled. *q* It was about the first November; were there not a good many leaves in the road. *a* Yes.

Questions by the counsel for the prisoner.

If there were leaves over the lead how could you see it. *a* we knocked the leaves off. and saw it. *q* Did the leaves look like they had been heaped on it. *a* No it did not look like it had been covered

q Were the leaves deep on it. *a* No. *q* Are there not many persons in the neighborhood who ride with loaded whips. *a* I dont know. *q* Does your father ride with one. *a* No; such a thing as this, (*a* *cowhide*,) does either of us very well. *q* Was the lead much the same shape as at present. *a* It was bent. *q* Was it much bent: *a* It was smartly bent. *q* Did it look like the end had been struck against any thing. *a* Yes, it did. *q* Bend this lead as near as possible to the shape it was. The witness bent the lead thus. 

STEPHEN COLLINS, sworn.

Questions by attorney for Commonwealth.

Q. On Monday the first of November last were you in company with Desha at Whitaker's, and if so, state whether he had a whip. *a* On that day I was helping Whitaker in killing a beef, Desha was there, we had a whetstone which Desha was using to sharpen his knife, and cut his finger. I advised him to have it tied up, which he did, and I heard no more about it. He had what is called a loaded whip, I had hold of it and remarked its weight, and observed at the time, what a lick a man might give with it. *q* Look at these fragments and see if they are not the fragments of the one he had at Whitaker's. *a* I cant say positively, but I believe they are. *q* Had Desha's a lash. *a* No. *q* Was it not of the description of whips which have lashes. *a* Yes; but it had none. *q* Did you see Desha's horse then. *a* I did. *q* Where was his horse. *a* He was hitched at the door. *q* Had he saddlebags. *a* I saw none. *q* How was he clothed. *a* He had on a pair of blue pantaloons, and a roundabout, I think of the same cloth. *q* Did you see him have a large red morocco pocket book. *a* No. *q* Was it a common roundabout

a Yes. *q* What time did Desha leave there. *a* Late in the evening. *q* How far is Whitaker's from Doggate's. *a* About three quarters of a mile. *q* Where did Desha go from Whitaker's. *a* He started toward Doggate's, but I dont know where he went. *q* What time in the evening, did he leave Whitaker's. *a* Late. *q* Did any person leave Whitaker's with Desha. *a* Yes, Benjamin Prather did.

Questions by counsel for prisoner.

Tell me what part of this whip makes you think it is the same Desha had that day. *a* I am not positive, but I think they are the fragments of it. *q* Give a reason why you think it is the same. *a* Nothing more than that it strikes my mind they are the same. *q* Point out the resemblance between the two. *a* I took no notice of the marks. *q* Give us a reason why you believe. *a* I have said that I thought so. *q* How do you judge. *a* From what there is here to look at. *q* Does it look more like the same than any other whip of the same description. *a* I have said, that what remains of the whip induces me to believe it is the same. *q* It was not broken on the first November was it. *a* No. *q* Have you not had other whips of the same kind in your hand. *a* I have had some pretty much like it. *q* Are there not a great many of the same kind. *a* There are some of one, and some of another sort. *q* This is the one which you saw him have. *a* I think so, I had it in my hand and took smart notice of it. *q* Do you recollect what induced you to take it in your hand. *q* It was merely by chance. *q* Where were you and Desha, when you had hold of the whip. *a* I dont know where he was, but I was standing on some planks. *q* How did the whip come in your hands. *a* I picked it up. *q* What time in the day was it. *a* I cant say precisely. *q* Was it before or after dinner. *a* Before, for we had none that day. *q* What

time did you finish butchering beef. *a* In the forenoon I think, but we had no time piece. *q* Was it after you had finished butchering, that you had the whip. *a* Yes. *q* Do you recollect of telling him what a lick might be struck with it. *a* I did not tell him so, but I made the remark. *q* He was about where you were butchering was he. *a* Yes. *q* Did his finger bleed much. *a* It was bleeding. *q* Did it run in a stream, or was it dripping. *a* It was dripping. *q* Did you have any whiskey to drink at Whitaker's. *a* There was whiskey there. *q* Did you partake. *a* I drank some as well as the others. *q* You will only state that you believe it is the same whip. *a* That is all I will say. *q* How many ferril's had Desha's whip. *a* Two besides the but. *q* Were there any letters on the but. *a* None that I recollect. *q* Did you examine. *a* If there had been any I think I should have seen them. *q* Did you ask Desha what had become of the lash. *a* It was not my business. *q* Do you recollect whether that whip was speckled or striped. *a* It was a little black, and little something striped.

BENJAMIN PRATHER, sworn.

Questions by the Attorney for the Commonwealth.

Were you at Whitaker's when they killed a beef on the first of November. *a*: Yes. *q*: Was Desha there. *a*: Yes; Desha cut his finger whilst there. *q*: How long did Desha stay. *a*: 'Till evening. *q*: Had he a whip. *a*: He had the but of a whip. *q*: Of what description. *a*: What is called a loaded whip. *q*: Was it of this description. *a*: I can't say. *q*: Was it of the kind this one seems to be. *a*: Its appearance was like this. *q*: It was only a stock, was it. *a*: That was all. *q*: Is your recollection distinct upon the subject. *a*: It is. *q*: How was Desha clothed. *a*: He had a cloth roundabout

and waistcoat, and I think a pair of grey janes pantaloons. *q*: Was the roundabout of the usual length. *a*: It come about to the hip bones. *q*: Had he a pocket book. *a*: I think he had not, I saw none. *q*: What circumstance makes you think he had none. *a*: I saw him with Tickets in his hand, which he took from his waistcoat pocket. *q*: Were those money tickets. *a*: Yes. *q*: Did you not feel around him to see if he had one. *a*: No; he was sitting before me on some slabs, and I felt his sides to see if he had any tobacco. *q*: And you neither saw nor felt a pocket book. *a*: No. *q*: Did you leave there with him. *a*: I rode behind him home. *q*: How far is it from Whitaker's to your mother's. *a*: A quarter of a mile. *q*: Where did Desha go then. *a*: We staid till dusk he said he was going home. *q*: Would he be obliged to go by Doggate's. *a*: He would or could go another way home, but it was so dark I could not see which way he went. *q*: Had Desha's whip ferrils. *a*: Yes. *q*: How many. *a*: I don't know. *q*: Were there more than one beside the cap. *a*: It had more than one, but I did not see how many. *q*: Had Desha any saddlebags. *a*: None that I saw. *q*: Was he riding a bay horse. *a*: Yes; a bay horse with a snip in his face. *q*: From your recollection of Desha's coat could he have carried a pocket book of this size in it. *a*: No not outside. *q*: You dont think it could have been carried outside. *a*: No he might have had other pockets. *q*: What pockets did you feel. *a*: Those outside.

Questions by the counsel for the prisoner.

Did his finger bleed much. *a*: Not very much, he wiped it on his pantaloons, observing that it made no difference as he was a tanner. *q*: Had he shoes on. *a*: Yes. *q*: Were they plain and common. *a*: Yes. *q*: Were they plaited. *a*: If they were, they were as broad as a weeding hoe. *q*: How far from

your mother's to Doggate's. *a* By the road it is three quarters of a mile. *q* You could scarcely see who Desha was when he went from your mother's to Doggate's. *a* I could not have distinguished him from any other person three hundred yards. *q* Was it dark before he got to Doggate's think you. *a* Yes it would be tolerable dark before he could get there.

Question by attorney for Commonwealth,

Are you acquainted with the difference between the road which leads by Ball's and the other road.

a. No I do not travel either much, report says there is not much difference. *q* Do you think that there is not much difference. *a* The difference is not great.

Questions by counsel for prisoner.

Is it common going to Mayslick to go the road by Ball's. *a* Yes, people often come to my mother's and ask a near way through; there are roads turning off almost at every ridge.

LARKIN SANDRIDGE, introduced and sworn.

Questions by attorney for Commonwealth.

Were you at Isaac Desha's about the 1st of Nov. last. *a* I was there on the day that the murder was supposed to have been committed; but I don't know what day of the month it was. *q* What day in the week was it. *a* Tuesday. *q* Was it not the first Tuesday in the month. *a* I cant tell. *q* What time in the day were you there. *a* Between 11, 12, and 1 o'clock; but I am not certain. *q* Was Desha there. *a* No. *q* Where was he. *a* I don't know. *q* Did he return while you were there. *a* He did. *q* Did any person come with him. *a* His brother John and Mr. Boswell. *q* Did you learn from him whether or not he had come from his father's. *a* I don't know that I did. *q* Did he come in that direction. *a* I was at the shop, but I only saw him come

from the house to the gate. *q* Did he say any thing
 to you of his having purchased a horse. *a* He said
 he had purchased a mare from a man he met on the
 road. *q* Did you see the mare. *a* No. *q* Did he
 describe her to you. *a* He did not. *q* Did he say
 what he gave for her. *a* He said he gave the man a
 note, that he (Desha) had on him, for the mare. *q*
 Did he say he had traded for the mare on that day.
a I am not positive that he did. Were there no other
 persons there but those you have mentioned, while
 you were there. *a* Young Ball and several others
 were there. *q* Did you hear Ball say any thing to
 Desha about a bridle. *a* Not as I recollect. *q* Have
 you been at Desha's since that time. *a* I have not. *q*
 Was it before or after the finding of the corpse that
 you were there. *a* It was before I had heard of it.
q You had heard nothing of the murder when you
 were there. *a* I had heard nothing of it. *q* Was it
 before you were married. *a* It was. *q* How long.
a Very short time. *q* When were you married.
a On the 11th of November. *q* Are you not satisfac-
 ed that it was not the Tuesday preceeding your mar-
 riage that you were at Desha's. *a* I can't say wheth-
 er it was the Tuesday preceeding or not. *q* Where
 were you the three days before you were married.
a I don't recollect. *q* Did you hear Desha com-
 plain of his finger bleeding. *a* I think he did. *q* Did
 he tell you when he cut it. *a* He did not say when.
q Was the wound fresh. *a* It was a pretty bad cut.
q Did you discover any blood on Desha's clothes.
a I saw some little on his coat; I thought it came
 from his finger. *q* Did Desha give you any descrip-
 tion of the contract he made for the mare. *a* I think
 he said, that when he met the gentleman, they talked
 something about a trade, the man told him he would
 take so much for the mare; (he Desha) said he would
 give him a note, which he had on him, for the mare

and he took it. *q* Did Desha say any thing about his having purchased a saddle and bridle with the mare. *a* he said nothing about it. *q* What did the stranger say when Desha presented him the note. *a* Desha said the stranger told him he could not refuse his own paper. *q* Did he tell you what the stranger's name was. *a* I think he did. *q* Do you recollect what name it was. *a* I do not. *q* Was it Baker. *a* I dont know what name it was.

Questions by counsel for prisoner.

Do you recollect what kind of clothes Desha had on. *a* He had on a blue cloth roundabout; I do not recollect what his other clothing were. *q* Were you acquainted with Desha for any length of time before. *a* Yes; I had lived with him for nine or ten months. *q* Did you see any change in his manner on that day. *a* I saw none; he met me as usual. *q* Did not Desha frequently trade in horses. *a* I have often seen him riding different horses; I never saw him trade but once. *q* You lived with Desha some time, you say, state what was his character. *a* I thought him a good disposed, open, friendly man; he was uncommonly good natured. *q* Was he not obliging—generous. *a* He was. *q* You say he appeared on that day as he usually did. *a* I saw no difference.

JAMES BELL, introduced and sworn.

Questions by attorney for Commonwealth.

Were you at Isaac Desha's house about the 1st of November last. *a* I was. *q* What day in the week. *a* Tuesday. *q* Was it the first Tuesday in the month. *a* I think it was, but I'm not positive. *q* What time of day were you there. *a* I went there about 12 o'clock; Desha was not at home; I waited until he came. *q* State what occurred after he came. *a* I heard Whitaker ask him what was the matter, Desha

said he had cut his finger at Whitaker's, and had been
 kicked by a horse that morning. *q* Who were with
 Desha when he came home. *a* John Desha and
 young Boswell. *q* Did they come on horseback or
 on foot. *a* I first saw them on foot. I was at the shop
q How far were they from the house when you first
 saw them. *a* When I first saw Desha, he was in
 his dwelling house. *q* Did you see their horses. *a*
 I saw none. *q* What did Whitaker allude to when
 he asked him what was the matter. *a* I suppose
 Desha looked bad or something else. *q* Have you
 been acquainted with Desha long. *a* I have for the
 last two years. *q* Did you see any thing in his appear-
 ance to cause such an enquiry. *a* I thought he look-
 ed out of order. *q* Was there not something unu-
 usual in his appearance. *a* I think there was. *q* Was
 Mr. Sandridge there. *a* He was. *q* How long was
 this before the corpse was found. It was the Tuesday
 before the day on which I was told the corpse was
 found. *q* What other persons were there. *a* I don't
 recollect of any other person except Whitaker.

Questions by counsel for prisoner.

Was it in the family house, or in the shop, that
 Whitaker made the observation to Desha. *a* It was
 in the shop. *q* Were Whitaker and Sandridge there
 when Desha came to the shop. *a* They were. *q*
 Was it immediately after Desha came in, that Whit-
 aker asked him what was the matter. *a* I don't re-
 collect that it was. *q* How far is it from the house
 to the shop. *a* But a short distance. *q* Did you
 see Desha when he first arrived at his house. *a* When
 I first saw him he was in the door. *q* You say he
 looked a little out of order. *a* He did I thought.
q Do you recollect the appearances that induced
 you to think so. *a* I think he looked as a man would
 when fatigued. *q* Was the tone of his voice as usu-
 al. *a* He spoke as he commonly did. *q* Did he

not converse with freedom. *a* I thought he did not seem quite so lively and chatty as usual, nor quite so full of his jokes. *q* Does he commonly joke. *a* Not always. *q* Might not this have been one of the times that he did not joke. *a* It might as far as I know. *q* You say you thought he did not appear as usual. *a* I thought he appeared to be a little down as though something troubled him. *q* Did that thought occur to you till after Desha was suspected. *a* Yes; it did. *q* Did you mention it to any body. *a* To no person but my wife. *q* When did you tell her. *a* When I went home. *q* Did you tell your wife what you supposed was the matter with him. *a* I told her I thought he looked worse than common. *q* Was his countenance flushed. *a* I thought it was; but I might have been mistaken. *q* Did you think his apparent sadness was the result of grief, or what. *a* I could not think what it was. *q* You say you mentioned it to your wife, did you tell her what you thought he had been doing. *a* I told her I thought he had been doing something wrong. *q* Was it not your conjecture that he had been engaged in some love indulgence. *a* No. *q* Did you think he had been guilty of any great crime. *a* No; not of any great crime. *q* How long did you stay at Desha's. *a* Perhaps two or three hours. *q* Did you stay till after dinner. *a* If the family had been to dinner I did not know it.

DR. JOHN DRAKE, introduced and sworn.

Questions by Attorney for the Commonwealth.

Did you not examine the body of the deceased. *a* I did about two days after it had been washed and dressed. *q* What was its appearance. *a* I can't speak positively as to the number or extent of the

wounds; I think there were five wounds on the head all severe and generally two inches in length; there was a large wound on the throat about four inches in length in which I inserted my finger; there was another on the breast, which I thought had been made with a small dirk; I probed it, and there was one other on the shoulder. *q* Did the wound on the breast appear to have been made with a sharp instrument. *a* It was my impression, that it had been made with a sharp pointed dirk, that was either round or square. *q* Did you express that as your opinion to the inquest, and do you now give it as such to the jury. *a* I did and still have the same opinion. *q* Was it not too deep to have been made by an ordinary penknife. *a* I am not prepared to say but I think it was not. *q* Would not the big blade of an ordinary penknife have made a larger incision. *a* It would. *q* Was it not too deep to have been made by the smaller blade. *a* I rather think it was. *q* You think it was made by a round or a square dirk. *a* That was my impression. *q* Was there a wound on the back of the head. *a* There was. *q* How deep was it. *a* It was to the skull. *q* Were there five distinct wounds on the head. *a* I think there were. *q* Was there not an aperture just above the breast bone, distinct from the wound on the throat. *a* There was; but it was connected with the wound on the throat, when I saw it, though it was my impression that some person, perhaps Doct. Desha who I was told had examined it, had by the insertion of some instrument, connected them together; I thought they were at first distinct.

Question by counsel for prisoner.

Was that aperture on the outside of the wind-pipe. *a* It was; it passed just under the breast bone between that & the wind-pipe. *q* Is not the partition there very thin. *a* It is. *q* Was it about the centre of the top of the breast bone; or was it to the right or the left. *a* It

was about the centre. Was that aperture connected with the wound on the neck. *a* When I saw it, it seemed to be connected; the wound on the neck was irregular, it appeared to have been made by three strokes. *q* Where on the breast was the other wound. *a* About here (the witness placed his finger just above the left pap.) *q* At the thickest part of the muscle on the breast could a common pen nife enter the cavity. *a* This man was full breasted, I do not think it would on him. *q* How far is it from the pleura to the outer surface. *a* Through the pectoral muscles it is about three inches. *q* Had this wound penetrated the pleura. *a* The probe struck a rib. *q* Would not the blade of a penknife have reached the rib. *a* If direct it would. *q* Is not an inch of flesh the ordinary depth in common men. *a* Through that part I think not. *q* It was two days after the body was found you made the examination you say. *a* It was. *q* What day of the week was it. *a* Wednesday. *q* Will the flesh of a man resist the probe after he has been dead ten days. *a* A little, but not much. *q* Did you make an experiment upon this body to see whether the flesh would resist the probe. *a* I did not. *q* Were there any symptoms of putrefaction about it. *a* I think not. *q* What kind of weather was it about the 1st of Nov. *a* It was rather warm than cold I think. *q* Did you notice his face. *a* Yes. *q* What was the state of his beard. *a* I don't recollect. *q* Is it not a fact that the beard will grow after death. *a* It apparently does; or the flesh recedes from it and makes it appear so. *q* Is not hair vegetable matter; or rather is it not a connecting link between animal and vegetable creation. *a* I cannot say. *q* You understand it however to be a fact, that the beard either grows or appears to grow after death. *a* I do. *q* You say there was no exterior appearance of putrefaction; was there none from smell. *a* None to any extent.

Q. Is it according to animal economy that the body of a man after death should lie ten days without putrefying, unless it was frozen. *a* If there was a discharge of much blood, as I suppose was the case with this man, it might. *q* Would not the contents of the stomach produce putrefaction. *a* It would, unless there had been spirits drank. *q* Do you think that spirits would lie in the stomach of a dead man for ten days. *a* I am not prepared to say; but I think it would have its effect to a certain extent. *q* Is there any thing on the head but the scalp. *a* There is a tolerably thick muscle on the side. *q* Was the skull fractured. *a* It was not. *q* Would a blow on the head, that did not fracture the skull prove mortal. *a* It would not in all cases; there are some cases however in which it would; it sometimes causes a pressure on the brain, and death ensues. *q* Was the throat cut with an edged instrument. *a* Yes. *q* Did the lips of the wound on the left breast indicate what kind of an instrument it had been made with. *a* I thought so. *q* Were there more than two lips. *a* The lips were like the lips of all punctured wounds. *q* Is it a rule in your profession to go into probabilities. *a* In this case the wound looked like it had been made with a sharp-pointed instrument that was round. *q* Is not certainty the limit to a man in your profession. *a* I do not speak positively with regard to this case. *q* When a punctured wound is made upon the breast does not the flesh generally protrude itself. *a* Punctured wounds generally do. *q* Were the lips of this wound closed, or did they approximate. *a* They did not approximate entirely, although they were not far apart. *q* Had you an opportunity of examining his clothes. *a* Not particularly. *q* Were they perforated in any part, so as to correspond with the wound on the breast. *a* I did not them give a close examination. *q* Did the lips of

this wound approximate within one fourth, or one eighth, or any proportion of an inch; state how near. *a* (The witness shewed a quill, and said they approximated to a distance a little larger than the point of the quill.) *q* Is it possible in ten days after a wound has been inflicted to tell with what kind of an instrument it was made. *a* I imagine not, in this case I speak from supposition. *q* Would you say positively with what kind of an instrument any wound was made. *a* I would not. *q* Was the large vein of the neck cut. *a* I did not notice particularly, the jury were satisfied with the examination I had made. *q* Was there any other wound on the surface of the breast. *a* There was a bruise I thought. *q* Is it not the tendency of the system after death, to putrefy. *a* It is. *q* Unless the body was frozen, did you ever know an instance of the suspension of putrefaction. *a* I dont know that I have; but I should suppose there might be an instance. *q* How long will a body remain under ground without putrefying. *a* I cant say in that case. *q* Have you ever known a dead body to lie ten days above the surface of the earth without putrefying. *a* I think a body might have laid that long without it. *q* Would you suppose one would lie seven, eight, or ten days in the woods without inviting the buzzards. *a* It would depend much on the season, and the posture in which the body lay. *q* Did you ever know a dead hog to lie that long without inviting the buzzards. *a* I never knew one to lie that long without becoming offensive. *q* Was not the forepart of November, mild weather. *a* I cant speak positively as to that, but I think it was. *q* You will not state positively with what kind of an instrument the wound on the left breast was made; whether it was round or square. *a* I dont speak positively about it. *q* Did you use the common silver probe. *a* I did. *q* How thick was it; was it thick as a rye

sira
the
kno
a I
ject
coat
was
thro
bloc
wou
far i
cavi
perh
brea
ten c
so.

A
the
prob
opin
men
of th
sent
no p
Ja

D
beef.
Desl
you
eleve
youn
-I
at he
q He

straw. *a* About as thick. *q* Did you put it through the flesh at any other place. *a* I did not. *q* Do you know that the flesh would have resisted it elsewhere. *a* I do not; I supposed it would. *q* Why do you conjecture there was much loss of blood. *a* From the coat which I saw, and from the wounds. *q* If there was no artery cut, would the blood leave the body through the veins. *a* Yes. *q* Was there more blood on the coat, than could have come from the wounds. *a* I did not examine particularly. *q* How far is it from the outer surface of the breast to the cavity within. *a* I cant say positively; an inch, or perhaps more. *q* Might not the apperture in the breast have been caused by the body's having lain ten days after death. *a* I should not have thought so.

Questions by attorney for Commonwealth.

Are you satisfied that the instrument which made the wound on the left breast, went as far as your probe did. *a* I am. *q* Are you convinced that the opinion you first formed, about the kind of instrument the wound was made with, is correct. *a* I am of the same opinion still. *q* Is that a professional sentiment or is it your opinion as a man. *a* I make no positive assertion about it.

JAMES WHITAKER, introduced and sworn.

Questions by attorney for Commonwealth.

Do you recollect on what day it was, you killed a beef. *a* First of November. *q* Were you at Isaac Desha's on the next day. *a* Yes. *q* What time did you get there. *a* I think it was somewhere between eleven and twelve. I went there to carry a hide, two young men were there, but I knew neither of them—I told them I had a hide for them. *q* Was Desha at home when the hide was weighed. *a* He was not. *q* How long after, before he came. *a* It was not

more than a quarter of an hour, before he and his brother and another gentleman whom I did not know came to the shop. *q* Was that the first you had seen of him. *a* It was. *q* Do you recollect of having observed any thing unusual in Desha's appearance. *q* I thought I did; and asked him "Uncle Isaac, what appears to be the matter," he said that nothing more was the matter than that he had cut his finger, and had been kicked by a horse. *q* What induced you to make the inquiry of him. *a* He looked dull. *q* Did he say when he was kicked. *a* He did not. *q* Was Mr Bell there. *a* He was. *q* Was Mr Sandridge there. *a* He was. *q* Are you satisfied that it was the day after you killed your beef. *a* It was the next day.

Cross examined by the counsel for the prisoner.

Were Messrs. Sandridge and Bell, present while you were speaking to Desha, *a* They were in the house. *q* Were Doct. Desha, and other gentlemen in. *a* I think the man I did'nt know was in. *q* Are you sure you put the question "Uncle Isaac, what appears to be the matter. *a* I think I did. *q* Do you recollect whether the apprentice was in the shop. *a* I am not certain. *q* Were you acquainted with Mr Sandridge. *a* I was. *q* Do you recollect what you said to him. *a* I do not. *q* How did he look. *a* He looked as usual. *q* What induced you to recollect that Desha looked dull, and that you put the question. *a* I cant say exactly but I think I asked him. *q* You think you asked him. *a* I think I did. *q* And you dont know why you recollect how he looked, and that you asked him, and do not recollect what you said to Sandridge and how he looked. *a* No. *q* May you not be mistaken in having addressed yourself to Desha in that manner. *a* Perhaps I may be. *q* Do you generally recollect neighborhood conversations. *a* Not always. *q* Did you talk with

Sandridge. *a* I did. *q* What did you say to him
a Not more than this, "how do you do." *q* Do you
recollect that you spoke those words to him or do
you only suppose you did. *a* I did, I believe.
b Did Desha act much as usual. *a* Yes. *q* You
asked him "Uncle Isaac what makes you look so
dull." *a* Yes. *q* Have you a distinct recollection
you asked those words, or is it only your impression.
a I asked those words. *q* Are you certain you said
"Uncle Isaac what makes you look so dull." *a*
I did I believe. *q* Was it because he looked dull
that you made the expression. *a* Yes. *q* Did you
say it more than once. *a* Only once. *q* Did you
speak those very words. *a* I did. *q* Why did you
use the expression "Uncle Isaac," to him. *a* I spoke
it to him through friendship. *q* Did Desha appear
unusual in his manner. *a* Only he appeared to look
rather dull. *q* Did you mention this to any body.
a I did not that I know of. *q* Have you mentioned it
before to day. *a* Yes. *q* To whom did you men-
tion it. *a* I dont recollect. *q* Was it before the body
was found. *a* I dont recollect. *q* When, where, and to
whom did you first mention it. *a* I cant say to whom
nor where I first named it. *q* Did any body enquire
of you about it after the corpse was found. *a* I was
enquired of all, around. *q* Then it was the first time
you mentioned it. *a* It was. *q* After the body was
discovered. *a* Yes. *q* Did you think of it till it was
mentioned to you. *a* I never thought of it till it was
mentioned to me. *q* Then the manner occurred to
you in which you had addressed him "Uncle Isaac"
a Yes, it then occurred to me. *q* And Desha's an-
swer. *a* Yes. *q* Did you have any conversation
with the strange gentleman who came with Desha.
a I dont recollect that I had. *q* What enabled you
to recollect that it was the first of November you kil-
led your beef. *a* I generally keep an almanac. *q*

Did you look in the almanac that day because you killed a beef? *a* Not particularly because I killed a beef. *q* Was there any unusual occurrence to make you look in the almanac. *a* I don't think there was. *q* Did you look in it or any almanac. *a* I did. *q* Why did you look, so that you could ascertain it was on first November you killed your beef. *a* If you must know, I keep whiskey to sell by the pint, and sell a good deal on credit; in making some charges I found out the day of the month. *q* You sell by the bottle and charge by the pint I suppose. *a* Maybe so. *q* Did you get any leather that day. *a* I did.

The Court then adjourned till tomorrow morning at 9 o'clock.

SATURDAY MORNING JAN. 22.

Met pursuant to adjournment.

WM. K. McCHORD, introduced and sworn.

Questions by attorney for Commonwealth.

Did you find a whip near where this murder was supposed to have been committed. *a* I found the cap of a whip. *q* Was it near the place of the murder. *a* It was near where he was supposed to have been attacked. *q* Is this the piece which you found. (the counsel then exhibited the cap of a whip.) *a* I think it is. *q* Were the other parts of the whip found. *a* They were. *q* Was the lead found previously. *a* It was. *q* Was the cap in the road. *a* It was lying in one of the bye paths, towards the edge. *q* Was it fair to view, or among the leaves. *a* It was not fair to view. *q* On what day did you find it. *a* Sunday. *q* Was it the Sunday after the body was found. *a* Yes.

Cross examined by counsel for prisoner.

You say you found it rather towards the edge of the road. *a* Yes, I found it in the track crossed by a tree near the edge. *q* How nigh were you to it when you found it. *a* I was nearly on it. *q* Was it hid or concealed. *a* It was not hid, though it was

cover
cover
not a
arou
narro
way,
then
you v
You
some
log.

JE

W
you v
A
socks
of lin
were
and b
mark
shirt:
ers th
were
was n
it was
Desh
Desh
wood
a No
a Yes
under
poeke
couns
poeke
found

covered in a manner with leaves. *q* If it had been covered with leaves could you have seen it. *a* It was not altogether covered with leaves, there were some around it. *q* Was the track where you found it a narrow bridle way. *a* Waggon's could not pass that way, there was a log across it. *q* It was a bye track then where horses travelled. *a* It was. *q* You say you were near to it when you found it. *a* I was. *q* You were not raking about when you found it I presume. *a* No I was not. *q* How far was it from the log. *a* Not far about two feet.

JEREMIAH OREAR, introduced and sworn.

Question by attorney for Commonwealth,

Were you present at the finding of some clothes, if you were state, where, and what they were.

a I was present at the finding of eight shirts, four socks, one waistcoat, a handkerchief and two pieces of linnen in a hollow tree. *q* What kind of shirts were they. *a* Two or three of them were very nice, and but little worn. *q* Was there any particular marks on them. *a* The marks were cut out of each shirt; I discovered on some the 1st letter, and on others the last letter of the name. *q* About what place were they found. *a* I never was there before, and was not acquainted with the ground, but I suppose it was about two or three hundred yards from Gen: Desha's fence. *q* Was it between General and Isaac Desha's. *a* It was on the right. *q* Was it in the woods. *a* It was. *q* Did you find any other articles. *a* No others. *q* Did you not find a pocket book. *a* Yes, the pocket book was picked up at the tree, under some drift-wood. *q* Did you not notice the pocket book. *a* I did. *b* Is this the same one. (the counsel presenting one.) *a* I think it is the same pocket book. *q* Were there any fragments of paper found near the place. *a* Yes, several. *q* Was there

any writing on them. *a* I think there was, but it was on small pieces; we picked up some and put them together and made out something as, "mare shod at" &c. *q* Do you recollect of having found the name of Baker on a scrap of paper. *a* Yes. *q* Did it suit the part of a name in pocket book. *a* Yes, it did. *q* Were the shirts tied up. *a* They were all thrown in loose. *q* What kind of linen were those pieces you mentioned. *a* I think they were flax linen. *q* Do you recollect if this scrap of paper is the one you picked up & placed on the pocket book so as to make the parts of the name correspond as it does now. (The counsel then placed the piece on the corresponding spot in the pocket book, so as to exhibit the name, "F Baker.") *a* I think it is the same piece that was picked up and laid on the pocket book as it now is at that time. (The pocket book and piece as placed, were then exhibited to the Jury for examination.) *q* Do you recollect this memorandum. *a* Yes, I recollect the memorandum about "mare shod, Port Gibson, and something about check." *q* Do you recollect any thing about New Jersey being upon it. *a* I do not. *q* Were you present at the finding of the saddle-bags. *a* I was not. *q* Do you recollect whether on your examination of the shirts and linen you saw any marks of blood on them. *a* I think there were some spots of blood on one or two of the shirts about the body, though the spots were small. *q* Were there any on the coarse linen. *a* None. *q* Look at the shirts and clothes, and see if they are the same, and shew on which the blood was. *a* These are the same shirts, but I cannot say as to the waistcoat, there being two here, and both made out of the same materials, however I am confident that one of them is the same; the other one I suppose is the one found on the corpse. *q* Show these shirts to the Jury and show where the names were cut out. (The witness took up the

shirts, and exhibited them to the jury, and observed that he thought the names that were cut out were written with durable ink, and that he had found some of the pieces which were cut out, but had lost them.)

q Did you see the shirt which was on the corpse.

a I saw the one said to have been on him. *q* State where those pieces of the shirts with the name on them were found. *a* By the tree at the same place.

q Did you observe the shirt said to have been found on the dead body. *a* I did; and the reason why I did, was to see if there was a hole in the breast of the shirt, to correspond with the wound in the breast of the corpse. *q* Is this the one. *a* I think it is the same.

q Did you observe the name on it. *a* Yes; I saw it—(the witness then showed the shirt and name to the Jury) *q* State whether these look like the other articles. *a* I think they are the same.

q Do you know any thing of a pair of gloves. *a* I know nothing about them. *Q* *by the Judge.* Is that shirt (the one found on the corpse) in the same condition now, that it was then; was it not bloodier than it is now. *a* I dont think it was bloodier then, than now; it looks like it did then.

Questions by the Attorney for the Commonwealth.

Some time anterior to this murder, did you not make a dirk for Desha. *a* I did not; I sold him a dirk sometime last spring. *q* Was it after you moved to Mason. *a* It was after that. *q* Was it sometime before the murder. *a* It was. *q* Describe that dirk to the jury. *a* It was a four square, slender, sharp pointed dirk, with a round silver scabbard and silver handle. (The counsel for the prisoner to save the trouble of farther examination on that subject as he observed presented a dirk to the witness, and asked him if that was the dirk he sold Desha; to which he replied that it was.) *q* Did you examine the waistcoat said to be found on the dead

body. *a* I did not. Do you know which of these is the one. *a* I am not satisfied which. *q* Did you examine the shirt with relation to the wound on the breast. *a* I did not at Ball's, but I did at Reid's because I had been told that I would be made answerable for having sold the dirk to Desha and I was anxious to know if the wound had been made with that dirk. *q* Did you notice this small hole. *a* I did. *q* You did not examine the waiscoat said to be found on the corpse you say. *a* No I did not.

Cross examined by counsel for prisoner.

Was there a road leading by the hollow tree. *a* No I think not, unless the road that lead from the bars went by it; there was some board timber in sight. *q* Could you see the clothes in the hollow tree by standing off at a distance. *a* There was a chunk in the hole but the clothes could be seen before it was pulled out. *q* You said there were some fragments of paper found some where near the tree, state the circumstances under which they were found. *a* There were some pieces of paper found close by the tree, a short time before we came to the place where we found them, most of the company dismounted, some of them went down one hollow and some another; after a while some one called and said there was some paper, and we all run to the tree; I thought some of the pieces would fit others; Boswell saw them at the distance of about fifty yards. *q* Were the saddlebags found that day. *a* No; they were found before. *q* Did you examine for tracks. *a* I did. *q* Did you make any discovery of tracks. *a* I did: in the morning after the news came to Mayslick several of us started out together for the purpose of going into the neighborhood of the murder, when we got to Ball's and had remained a while, most of the company mounted; at the end of the lane we turned to the right and in going around Ball's field some

distance we found the tracks of two horses which were very plain, we pursued them as far as we could; we could follow them easiest down hill and about the branches; the tracks were sometimes close together and sometime as far as ten feet apart; they were frequently separated by trees, and in one instance I recollect a lap of a tree was between them and from this I suppose that both of the horses were ridden, and that neither of them was led. *q* Did not those tracks go near where the clothes were found. *a* They went in that direction; we discovered a track where the clothes were found, but could not trace it. *q* How far was it from where you lost those tracks to the hollow tree. *a* It was three quarters of a mile or a mile. *q* Did they go through the woods. *a* They did. *q* Did they not cross several steep hills and large hollows. *a* They did. *q* Were not some of the hills so steep that you found it difficult riding down them. *a* Yes; several of the company dismounted and led their horses down; I did so, for I was afraid to ride down some of them. *q* You went out to the far end of Ball's lane into the road that leads to Doggate's, did you not. *a* I expect it was the road to Doggate's. *q* When you arrived at the back of Balls field, you then discovered those tracks did you not. *a* We did, and followed them for a mile and three quarters or such a matter. *q* Did not those tracks lead towards the place where the clothes were found. *a* They led right on the direction of the place. *q* On which side of Ball's plantation did you come upon the tracks. *a* I think we went to the far end of Ball's plantation and turned to the right, before we came on them. *q* Was it not on the opposite side of his plantation from Mayslick. *a* It was.—(a diagram illustrating the position of Ball's farm, the course of the road, and the direction of the tracks, was explained to the jury by the witnesses.

Questions by attorney for Commonwealth.

You started from Ball's you say. *a* Yes. *q* After leaving Ball's fence you went to the right and fell on the tracks. *a* Yes. *q* How far did you pursue them. *a* I don't know exactly how far; we lost them before we found the clothes. *q* How far is it from where you lost the tracks to where you found the clothes. *a* The last that I saw of the tracks was on a branch, perhaps it was one half or three quarters of a mile from the clothes. *q* After you had lost the tracks how were you guided in the direction towards the clothes. *a* When we lost the tracks Dr. Harman said he would conduct us to the place where the saddlebags were found, the company divided and part of us went with him; we pursued the course he took us until we found the clothes. *q* You said something about a track near the tree, did you pursue it. *a* We attempted it but could not follow it. *q* Where did you go when you left the tree. *a* To Gen. Desha's. *q* Was the place where the clothes were concealed a secret place. *a* It was not a very secret place; it was in a small hollow; there was a tree of board timber near; the hole in the tree where the clothes were was carefully stopped, as a person would stop a rabbit in a hole. *q* Did you discover at the tree, but the track of one horse. *a* That was all. *q* After you lost the tracks of those two horses at the branch, did you discover the tracks of any other horses but this one. *a* We saw the tracks of the horse at the tree only.

Questions by counsel for prisoner.

How far is it from where you first discovered the tracks of those two horses to where the clothes were found. *a* I can't say how far it is. *q* Was it after you left the road by Ball's that you discovered those tracks. *a* We discovered them in the woods after we had left the road. *q* How far did you follow

then
a mi
lost
not
foun
pany
scar
and i
the
cross
some
the
up t
bran
not s
You
were
about
after
trac
ing i
pers
trac
not
part
geth
goin
were
that
I thi
of a
hors
on t
er t
side
near
cloth

them before you lost them. *a* We followed them a mile, or a half, or three quarters of a mile, before we lost them, but I cant say exactly how far. *q* Did you not see those tracks at the last branch, before you found the clothes. *a* We did; at the branch the company separated, those who were with me went to search for the place where the saddlebags were found and in going to that place, we passed by the tree where the clothes were hid. *q* Do you recollect when you crossed the branch where you last saw the tracks, if some of you did not go up the ridge, and some up the branch. *a* I do, some went up the ridge, and some up the hollow. *q* Did not those who went up the branch pursue the tracks still farther on. *a* We did not see the tracks after we crossed the branch. *q* You went from the branch to where the saddlebags were found, and therefore you knew nothing more about the tracks did you. *a* I did not see the tracks after we crossed the branch. *q* From pursuing those tracks as far as you did, did they not seem to be going in a straight direction. *a* It appeared like the persons, who were riding the horses, that made those tracks, knew where they were going. *q* Were they not sometimes near together, and sometimes far apart. *a* They were; sometimes they were close together and at other times ten feet apart, frequently going around large trees. *q* You mean that there were large trees between the tracks. *a* Yes; I mean that there were tracks on each side of the tree. *q* I think you said, in one instance there was the lap of a tree between them; did you not. *a* I did; one horse had gone on one side of the lap and the other on the other side. *q* And you say they went at other times close together. *a* At other times they went side by side. *q* Had not the family been getting wood near where the clothes were found. *a* Yes; the clothes were found in a little hollow, and on the ridge,

the small wood was cut out. *q* And you said I think there was a timber tree near, fresh sawed for boards. *a* Yes; it was in sight. *q* Will you tell us what is the character of Isaac Desha. *a* I never knew him till I moved to Mayslick; but after I became acquainted with him I knew nothing amiss of him. *q* Did you ever see any thing to make you suspect him. *a* No. *q* Did you not have perfect confidence in him. *a* As much as in any other man, and I would as soon have suspected my own brother as him.

Question by attorney for Commonwealth.

Was the search to which you allude made the day the corpse was found or the day after. *a* The day after; the news came to Mayslick on Monday, and the next morning we started out. *q* What was the apparent age of those tracks, were they new or old. *a* I cannot tell whether they were new or old; a good many of the tracks were covered with leaves. *q* Were the horses shod or not. *a* I think they were not. *q* Had there been rain a short time preceding. *a* I dont think there had been, but I do not recollect about it; I remember it snowed a little on the Friday before. *q* Was it not a cold spell of weather for the season of the year. *a* I recollect Friday was a cold day for the season. *q* Did you ascertain how long before the saddlebags were found. *a* They were found the Friday before the corpse was found. *q* Had you heard before, of the circumstance of the saddlebags being found. *a* I never heard of it but once before; I told Dobbins of it myself before. *q* Had any previous search been made before you went out. *a* I dont know the way I came to know that the saddlebags were found, Doct: Harman told me of it and asked me on Saturday or Friday, to go out with him to make a search. *q* Doct: Harman requested you to join in the search did he. *a* He did, and said that we could take a partridge net with us, and hunt partridges at the same time.

Questions by counsel for prisoner.

Did Doct: Harman tell you how the saddlebags were found. *a* He told me that he, his wife and others were partridge hunting when he found them. *q* And it was in the conversation about the partridge hunt that he told you of the saddlebags, was it not. *a* It was. *q* Is not Gen: Desha's a large farm, and has it not a great abundance of partridges about it. *a* It is a large farm; I saw a great many partridges about it.

Questions by attorney for Commonwealth.

Did Doct: Harman tell you that he suspected some person had been robbed near that place. *a* He said, he was afraid something was not right.

Questions by counsel for prisoner.

Did he not tell you his reason for his apprehension. *a* Yes; he said the reason he suspected something was, because the saddlebags were cut open at the ends.

*THOMAS JONES, introduced and sworn.**Questions by Attorney for the Commonwealth.*

Were you present at the finding of some clothes. *a* I was within thirty or forty yards of the place when the shirts were found, but when I came up, they were tied up in a handkerchief. *q* You say they were taken out of the tree and tied up before you came up to the spot. *a* They were. *q* Did you examine them afterwards. *a* I did; I saw them untied at Gen: Desha's. *q* How many shirts were there. *a* Eight. *q* What else was there. *a* Four pair of socks, two pieces of linnen, and one waistcoat. *q* Had the waistcoat a rent in it or not. (The witness exhibited the one found with the shirts; it had no rent in it.) *q* Were you present when the corpse was found; did you see the clothes on him. *a* I did not

see the clothes until after they were washed. *q* Are you satisfied they were washed before you saw them. *a* I went to Mr. Ball's and while I was there they were washed. *q* What did they consist of. *a* A shirt and waistcoat. *q* Is this the shirt that was shown to you as being the one found on the corpse. *a* I think it is. *q* Is this the waistcoat. *a* I think it is. *q* What day was it you saw those clothes. *a* The day after the corpse was found. *q* Who were you in company with. *a* Orear was with me. *q* Was there not a pocket book found at the same place where the shirts and other articles were found. *a* Yes; but it was found before I came up to the spot. *q* Is this the same pocket book. *a* I think it is. *q* Were any of the shirts stained with blood. *a* One or two of them were stained with small spots of blood. *q* Was there any blood on the pieces of coarse linnen. *a* I dont know whether there was or not, I did not examine particularly. *q* At what place did you first see the clothes that were found on the corpse. *a* At Mr. Ball's.

Questions by counsel for prisoner.

Did you see this shirt and and waistcoat on the body, or were you only told they were on it. *a* I did not see them on it. *q* Did you think that the shirts which were found in the tree had been worn or not. *a* One of them I think had been. *q* Had they been washed before you saw them. *a* I think not. *q* Did you think they had been worn by Baker after they were washed. *a* I cant say whether they had or not.

JOHN M. RIED, introduced and sworn.

Questions by the attorney for the Commonwealth.

Did you see the corpse before it was stripped. *a* I did. *q* What clothes were on it. *a* A shirt waistcoat and socks, I think. *q* Were the socks wool-

on or thread. *a* I don't recollect. *q* Describe the
 wounds on the body. *q* There were two wounds on
 each side of the head & one behind. *q* Were they se-
 vere wounds. *a* They looked like they were. *q*
 What wounds were on the body and throat. *a* The
 throat was cut there was a bruise on the breast, but
 I did not notice that the skin was broke. *q* Did you
 examine the clothing on the deceased with a view
 to the wounds on the body. *a* I only examined the
 shirt collar with that view. *q* Was there not a
 small hole through the waiscoat and shirt correspon-
 ding with each other. *a* I did not notice any hole
 in the waiscoat; I only saw a break near the corner.
q Had you any conversation with Isaac B. Desha
 after or before that time relative to this matter. *a*
 I had on the next evening. *q* State the substance
 of that conversation. *a* I mentioned the circum-
 stance to him, he went on to clear up the different
 points alleged against him, I asked him if he had
 breakfasted with Baker at Doggates, he said he had,
 that they started from Doggates nearly together, that
 he overtook Baker at the well and rode with him to
 the stackyard, that he then turned off, Baker rode on
 and he saw no more of him; he further said that after
 he had crossed Johnston he got down to tie his fing-
 er and that his horses then got away from him. *q*
 Did he say how he got possession of the grey mare.
a He said that he met two men, that one of them
 was a Mr. Baker on whom he held a note for \$63,
 with interest for several years, and that he gave Ba-
 ker the note for the mare. *q* Did he state where on
 the road the trade had taken place. *a* He said he
 fell in with them near Allen's. *q* Did he say on
 which side of Allen's. *a* He did not. *q* How
 far is it from Allen's to Doggate's. *a* It is between
 a quarter and a half of a mile, but I can't say exact-
 ly. *q* In this conversation did Desha say any thing rela-

give to a bill of sale. *a* He said that he had a bill of sale and the certificate of a man who was present at the trade. *q* Did he shew you a paper which he stated was the bill of sale. *a* He did. *q* Was it written with a pencil or with ink. The counsel of the prisoner objected to the answering of this question by the witness, and adduced various arguments in support of the position; to which the attorney for the Commonwealth replied and urged the legality of the question. Court.—If the attorney for the Commonwealth had wished the bill of sale produced, he should have notified the prisoner to produce it, and if the prisoner had failed to do it, he might then resort to that kind of testimony to prove its character and contents which he now wishes to introduce; but as he has failed to notify the prisoner as the law requires, and as the bill of sale is a higher evidence in itself of its own contents and character, than the oral testimony of any individual can possibly be, I deem the question an improper one and the witness will not answer it. *q* Did Desha tell you whether it was written with pencil or ink. *a* He did not say how it was written. *q* Did he tell you of whom he got the mare. *a* I think he said from one Baker. *q* You think he said Baker, *a* I think he did.

Question by counsel for prisoner.

Did he say of what Baker he got the mare. *a* I think he said John Baker. *q* Did you understand from him, that he got her from Baker the deceased. *a* I did not. *q* Did not you and others go to Col. Pickets for Desha. *a* I met the company going to Col. Picket's; I turned back and went with them; when we got to the style I stopped and I did not go in until afterwards. *q* Did Desha appear to be composed. *a* He was as much composed as ever I saw him; he came with us without any hesitation.

Questions by attorney for the Commonwealth.

Before you started from Picket's did you intimate to Desha the suspicion against him. *a* No. *q* How far did you go before he was informed of it. *a* I do not know; but it was not far. *q* Did you first give him the information. *a* I did not. *q* Was it not dark when he was informed of it. *a* I could not see him distinctly. *q* Did you discover any change in his voice, or any embarrassment about him. *a* I discovered nothing of the kind.

Questions by counsel for prisoner.

Did he not go voluntarily with you to Gen. Reid's the Magistrate. He did. *q* Could not Desha have easily made his escape on the way. *a* I don't know what others might have done; I had no authority myself to detain him. *q* Did you ride around him to keep him from escaping. *a* No; Desha and myself rode behind the rest for some distance. *q* Could he not have escaped the next day after the accusation was preferred against him. *a* I was with him the next day and I think he might have escaped, he was once in the lane, once at the table and was in the orchard different times with different persons. *q* Have you known Desha for any length of time. *a* I have known him from a boy. *q* Tell the jury what his character was before this affair happened. *a* I never knew any thing against him; I always thought his character was as good as that of any other person.

q Did you not consider him a humane, kind and liberal man. *a* I did. *q* Even in the party agitations which prevailed through our state, did you ever see him display any bad blood. *a* No; I never saw him out of temper in my life.

Questions by the Attorney for the Commonwealth.

Did Desha tell you he had purchased the mare, on the day he left Doggate's. *a* I understood him so, and that he got her near Allen's.

ABSALOM GLENN, introduced and sworn.

Questions by attorney for Commonwealth.

State whether you were one of the persons who went to Col. Pickett's after the mare, and brought her to General Ried's. *a* I was. *q* By whose direction did you go. *a* I had an order from Isaac B. Desha to Col. Pickett for the mare. *q* Did you go on & deliver the order to Col. Pickett. *a* Yes and he delivered her. *q* Did you carry her to Gen. Ried's. *a* Yes. *q* Have you seen her since. *a* Yes. *q* In this place. *a* Yes. *q* Is the one you saw at this place, the same mare you brought from Col. Pickett's to Gen. Ried's. *a* She is. *q* Who went with you to Col. Pickett's. *a* William Ried. *q* To whom did you deliver the mare when you arrived at Gen. Ried's. *a* I don't know who took her; there were a good many persons there. *q* Are you satisfied that the mare which is now in this place is the same *a* I am. *q* Did you see her at Goddard's in Flemingsburg. *a* I did; it is the same mare.

Questions by the counsel for the prisoner.

You say you brought her from Col. Pickett's to Gen. Reid's. *a* I did.

MAJOR LACEY, introduced and sworn.

Questions by attorney for the Commonwealth.

Did you after the corpse was found run the line between the counties of Mason and Fleming to ascertain in what county the murder was committed. *a* I did. (The counsel for the prisoner conceded the point that the murder was committed in Fleming co.) *q* Do you recollect what kind of weather the first week in November was. *a* I recollect what kind of weather it was on Friday. *q* What sort of morning was it. *a* It was a cold rainy morning. Question

by the Judge — What Friday do you mean. *a* The first Friday in Nov.

Questions by attorney for Commonwealth.

Was it unusually warm about that time or was it such weather as is common at that season. *a* I think it was such weather as it usually is about that time of year; but I don't recollect of noticing any other day particularly but the Friday I mention. *q* Are you not able to say, that animal bodies after death, will lie in that season of the year, more than a week before putrefaction takes place. *a* I have known dead bodies, such as hogs, dogs, &c. to lie a considerable length of time; in one instance I knew a dog to lie all winter. *q* Would you think it extraordinary for a dead man about the first of Nov. to lie eight or ten days, or two weeks without putrefaction, *a* I am not able to say as to that; I cannot say that a dead man would lie that long.

Questions by counsel for prisoner.

So far as your observation has extended is it not the tendency of animal bodies after death to go into a state of putrescence. *a* I know that animal bodies after death will putrefy in warm weather. *q* Are you able to say that there is a neutral point between life and putrescence. *a* I cannot say. *q* Well; have you not seen the buzzards about dead cattle very shortly after they have died. *a* I have seen buzzards about them in two or three days after the death. *q* Have you not seen buzzards about carcasses which you could not smell. *a* I have often found my own stock that were dead, by means of the buzzards. *q* Do you recollect to have noticed any dead person at that season of the year to smell, although it remained but a day or so out of the ground. *a* I don't recollect. *q* Have you never seen a dead person that smelt. *a* I have.

Questions by the Attorney for the Commonwealth.

Does not your experience tell you, that a dead body which will putrefy in one day in the summer, will lie two weeks in the winter without any signs of putrescence. *a* I think it does.

Questions by the counsel for the prisoner.

Do you recollect whether or not it snowed on the Friday you spoke of. *a* It rained a little that morning. *q* Was it not more chilly on that day because it had been previously warm. *a* As to what kind of weather it was before the Friday of that week I don't recollect. *q* Has it not been the common remark among your neighbors that last fall was unusually mild. *a* It was a very favorable fall; I have frequently heard others remark it.

JOSEPH K. SUMERIL, introduced and sworn.

Questions by Attorney for the Commonwealth.

Were you one of the inquest over the body of the deceased. *a* I was. *q* Did you see a wound in the breast that appeared to have been made with a round or a square instrument. *a* I think there was a small wound in the breast, but I could not tell with what kind of instrument it had been made. *q* Were there any holes through the shirt and waistcoat, corresponding with the wound on the breast. *a* I think I examined the shirt and waistcoat; I believe there was a hole through each corresponding with the wound. *q* Do you know this shirt. *a* I think it looks like the one which was said to have been on the corpse, but I did not see it on it. *q* Examine this waistcoat and say if it is not the same that was shewn to you and if this is not the hole to which you just now alluded. *a* It is the same; I recollect perfectly well of having noticed this hole at that time. *q* Were the shirts and other articles washed. *a* I was told they

were. *q* Did you see them in a wet state. *a* I did not. *q* What kind of weather was it about the first of November last. *a* I have no particular recollection about it; I had not been from home till the morning of the inquest; that day was quite cold.

Questions by prisoner's counsel.

Do you recollect of having discovered more than one wound on the breast. *a* I at first supposed that there was more than one, but upon a particular examination by the inquest and Physician it was believed that there was but one. *q* Do you recollect of having seen more than one hole through the waistcoat. *a* I don't think I saw more than one. *q* Did you compare the wound on the breast with the hole in the waistcoat to see if they would correspond. *a* I made no comparison. *q* You say you did not see but one hole in the waistcoat. *a* I think I saw but one. *q* Did you examine the waistcoat yourself. *a* I did. *q* Was there more than one hole in the shirt. *a* It was very much torn about the collar. *q* Had it more than one hole in the breast. *a* I don't recollect of having seen more than one. *q* Did you examine the shirt yourself. *a* I did. *q* You say there was but one cut in the breast of the shirt and but one in the waistcoat. *a* That is all I recollect to have noticed. *q* Is this the cut you saw in the breast of the shirt. *a* I think it is, but I did not notice particularly. *q* Do you recollect what day it was the inquest was held. *a* I think it was Wednesday. *q* Did you notice the face of the corpse. *a* I did. *q* Was his beard long or short. *a* I think it was not long. *q* Was not his face free from beard. *a* It was not entirely free from it; but his beard was quite short. *q* Did the corpse smell offensive. *a* I thought it smelt so once or twice, but it was not generally offensive, although there was a large fire in the room where it was.

Questions by the attorney for the Commonwealth.

Was it not the business of the inquest to ascertain the number of wounds on the corpse. *a* Yes. *q* Did they not examine whether the hole in the shirt and waistcoat corresponded with the wound on the breast. *a* They did. *q* Are you satisfied that they corresponded. *a* I am.

Questions by the counsel for the prisoner.

You say there was but one wound on the breast although the jury thought at first there were two. *a* Yes; we thought at first there were two, but afterwards ascertained that there was but one.

*ALEXANDER HARMAN, introduced and sworn.**Questions by attorney for Commonwealth.*

State whether you and some others didn't find a pair of saddlebags, and if these are the same. *a* I believe they are the same found by myself and others while we were partridge hunting; Boswell first discovered them lying upon some brush 10 or 15 steps from Gen. Desha's fence. *q* Was there any thing in them. *a* Nothing. *q* Was the flap cut off. *a* It was. *q* I see a name on these; was it on them. *a* I don't think it was; I examined them particularly, I looked in the bottoms, on the outside under the buckles but saw none. *q* On what day did you find them. *a* I think it was the Wednesday after the day the murder was said to have been committed; perhaps Thursday. *q* Did you make immediate mention of the circumstance to your friends. *a* I went on directly to Mayslick & mentioned it to several persons. *q* Did you make any search about the place for the purpose of making some further discovery. *a* Boswell and myself got down, looked through the field and hollow but saw nothing to attract notice.

q What way did you and Boswell go. *a* We came through a pair of Gen. Desha's bars. *q* Did you go through the woods. *a* No; we went through the field. *q* Had you been netting on any preceding day through those woods. *a* I dont remember. *q* Are there not other persons about there who follow it a good deal. *a* There are a number of persons who do. *q* Was it a good season for it. *a* The weather was mild. *q* Did you know any thing of Isaac Desha having got a strange nag. *a* I did not; I had not seen him for eight or ten days as I recollect. *q* Did he get one at any time afterwards. *a* I know nothing in relation to it except this, I was told at Shanon's meeting house that he had one.

Questions by counsel for prisoner.

Were any other persons along besides Boswell and yourself. *a* Boswell and his wife and another lady were in company.

ABNER LOGAN, introduced and sworn.

Question by attorney for Commonwealth,

Were you one of the persons who carried the prisoner to Flemingsburgh. *a* I was. *q* Did you notice the mare. *a* I did. *q* Did you see her at Flemingsburgh. *a* Ycs. *q* Have you seen the mare at this place. *a* I have; it is the same mare.

The Attorney for the Commonwealth after having premised to the Court; that he was through the testimony of all the witnesses on the part of the Commonwealth, then present; that there were some other witnesses who had been summoned in time, and whom he expected every moment to arrive, and that there was one other who he had but lately been informed could identify the mare either as the property of Francis Baker, dec. or not as his property, for whom he on yesterday, had a subpoena issued, and

of whose presence he had every reason to be assured; moved the court to permit the prisoner to progress with the testimony in his behalf, and that when those witnesses should arrive, that he be suffered to examine them on the part of the Commonwealth. The motion was opposed by the counsel for the prisoner; who urged that the granting of such a privilege to the Commonwealth, would be a violation of the rights of the prisoner, as well as of the long established rules of every Court of criminal Jurisdiction on that subject. The motion was overruled.

The court then proceeded to the examination of the witnesses on the part of the Prisoner,

GEN. REED, first introduced and sworn.

Questions by counsel for prisoner.

Had you a conversation with McCarty in relation to his having found a bridle. *a* At Flemingsburgh when the trial was expected there, McCarty told me that on Tuesday he left old William McChord's, in company with several others, at ten minutes after ten o'clock, and came on the same track on which the murder was supposed to have been committed, I asked him whether he then saw the bridle, he said he did not; I then asked him whether if it had been there then, he would not have seen it, he replied he thought not, though he was hunting deer and it might have escaped his notice. *q* Where about in the road did he tell you he found it. *a* He said that he had been to Johnson's fork, and in returning found it, I asked him how it laid when in the road, he said that it was quite plain to view. *q* Is Doggate's to the south of where the body was found. *a* Yes; McCarty, said that he got to Powell's between 12, and 1, which is four miles, or four and a half west of the place where the murder was committed. *q*

He w
side n
top of
first t
had n
I wer
a cau
jury
plain
the li
sever
blood
groun
only
else
that
a Ye
we d
start
seen
the c
or bi
the s
Yes;
wais
ried
the c
them
wash
wais
of th
in le
coat.
torn
I did
thinl
day.

He was returning when he found it, was it on the side next Doggate's when found. *a* Yes, about the top or turn of the hill. *q* Were you amongst the first that visited the dead body. *a* I expect I was, it had not been touched, young Ball informed me and I went there sometime after night. *q* Did you light a candle. *a* Young Boswell lighted it. *q* Tell the jury whether or not the trail made by the body was plain. *a* We discovered the trail and followed it by the light of the candle to the road, the leaves and several chumps were turned over, but we saw no blood. *q* Was there no appearance of blood; nor the ground torn up as if there had been a scuffle. *a* No, only there were fewer leaves there than any where else. *q* And from that point, the trail was so plain that you could see it for some distance before you. *a* Yes; we could see it for twenty yards before us; we did not discover the trail till we were about to start from the place. *q* Was there no blood to be seen but what was on the clothes. *a* No. *q* Was the corpse offensive; was it mangled or torn by beasts or birds of prey. *a* It was not. *q* Did you examine the shirt and waistcoat that were on the corpse. *a* Yes; particularly. *q* Did you see in the shirt and waistcoat more than one cut. *a* After we had carried the corpse to Ball's, I objected to having of the clothes washed, but as we could not examine them well as they were, we concluded to have them washed; the shirt collar was very much cut, and the waistcoat had a cut in the left side, just in the edge of the arm hole, of about three quarters of an inch in length. *q* Did you see no other cut in the waistcoat. *a* I think one of the pockets was somewhat torn. *q* Did you notice the beard of the corpse. *a* I did; it looked like it was about two days old; I think though, my beard would grow as much in one day. *q* Was there a hole in the shirt and waistcoat,

that corresponded with a wound upon the breast.
a There was a wound on the largest breast bone and just below it there was a bruise that was nearly red, which seemed to have been made with the same instrument that the cut in the edge of the arm-hole of the waistcoat was made with; (the witness took the shirt and waistcoat and showed the cut he alluded to.)
q Did the wounds appear to be fresh. *a* They appeared to be fresh; they bled much when Dr. Drake examined them. *q* Did you see any other cut on the waistcoat except the one you showed to the jury just now. *a* I saw no other; as I expected to be called on, I examined particularly. *q* Was there any blood on the shirt below the collar. *a* There was none, except on the right side; the left side and back of the shirt were clean; in carrying the corpse to Ball's though, it bled some little on the clothes. *q* Did you examine the pockets of the pantaloons. *a* I went home that night from Ball's; there were no pantaloons on the corpse; I examined the coat, it was said that when it was found the sleeves were turned wrong side out. *q* How long was it after the body was found before it was interred. *a* It was found on Monday, and buried on Thursday. *q* Did the body become very offensive before it was buried. *a* On Tuesday I saw no alteration in it from what it was when found, and but little on Wednesday; on Thursday it turned black and began to be somewhat offensive. *q* Was not the trail large enough to strike the eye of a passenger in the road. *a* I cant say, there were two roads; in crossing it it must have been noticed, unless the eye of the person was engaged in looking at something else. *q* Was there not a stream of water near the place, where a man could have washed himself. *a* There was none betwixt that and Ball's, on the other side it was not far to Johnson's fork, or to another branch. *q* Did you see the shirts

that
 were
 I did
 on th
 thre
 spec
 Som
 outs
 one
 was
 thin
 was
 face
 ed,
 kind
 a I
 wer
 on l
 wer
 in t
 tale
 mee
 sha
 to r
 abo
 itat
 a l
 Yo
 sav
 Di
 an
 fas
 hir
 no
 q
 he
 nes

that were found in the hollow tree, shortly after they were found. *a* I did. *q* Did you examine them. *a* I did, particularly. *q* Did you discover any blood on them. *a* I saw some spots of blood on two or three of them. *q* Did you examine whether those specks were on the outside or the inside of them. *a* Some appeared to be on the inside and some on the outside; there were some spots on the inside of one of the sleeves; on the tails of some of them there was something like blood and water. *q* Did you think those shirts had been worn after they had been washed. *a* I think some of them had. *q* Was the face of the corpse bloody. *a* No; after it was washed, a little blood came out of the nostrils. *q* What kind of weather was the first week of November. *a* I think most of the week was pleasant; my hands were gathering corn all that week; it rained a little on Friday, though it was good weather. *q* When were the coat and pantaloons brought in. *a* Early in the morning after the corpse was found; the pantaloons, coat, and shoes were brought to Shannon's meeting house which adjoins my farm. *q* Did Desha the prisoner come to your house. *a* He came to my house the Tuesday after the corpse was found about 11 o'clock at night. *q* Did he show any agitation, such as you might trace to a bad conscience. *a* He did not; he came in and spoke as usual. *q* You say he showed no agitation of any kind. *a* I saw nothing about him more than was common. *q* Did not Desha examine the corpse; did he then show any agitation. *a* He did in the morning after breakfast; while he was looking at the corpse, I noticed him closely to see whether he would be agitated or not, but I discovered nothing of the kind about him. *q* Could not Desha have escaped from your house if he had been so disposed. *a* He told me on Wednesday night that he wished to go home, I told him

that he was suspected, and had been brought here for the purpose of an examination, he replied if that was the case he would not go until a full investigation had taken place; I did not think it was necessary to have him guarded. *q* Was he not in the yard that evening alone with you. *a* He was; we were there I suppose for a quarter of an hour talking about the circumstances &c.

Questions by attorney for Commonwealth.

Did you hear the evidence of McCarty. *a* Yes.
q Did you discover any variation in his statement on this and on the former trial. *a* Only a slight one with respect to the time; he said in his statement here that he started from old McChords at half past ten; he said on the former trial ten minutes after ten.
q You have spoken of the clothes; did you not when you examined this shirt discover this small hole. (The counsel showed the witness the shirt which was found on the corpse and which had a small hole perforated through the left breast, to which he alluded.)
a I did not observe this hole then. *q* Did you not observe this small hole on this waistcoat; (presenting to the witness the waistcoat found on the corpse with a small hole perforated through the left breast.)
a I did not. *q* Are you prepared to say that neither of those holes were in the shirt and vest at that time.
a I will not say they were not there then. *q* Did you hear any person say that those holes were there.
a I heard nothing about them till I came here. *q* In whose custody were this shirt and waistcoat till the trial at Flemingsburg. *a* They were at my house.
q And during the time they were at your house you did not observe those holes. *a* I did not I examined them a dozen times. *q* In whose custody were they at Flemingsburg. *a* In the custody of the officer. *q* Were they in the custody of the officers of that court till they were brought here. *a* I expect

they
of th
prob
you
q W
wou
ing
long
was
ven
ther
the
with
You
seen
was
size
man
the
no-
it ha
the
been
q V
was
carr
so t
Are
you
tho
had
any
bae
cate
mac
the
live

they were; the sheriff was directed to take possession
 of them. *q* Were you present when Doct Drake
 probed the wound on the breast. *a* I was. *q* Had
 you seen it probed before. *a* Yes; by Dr. Desha.
q What would you suppose was the extent of that
 wound. *a* It was not deep; it went in rather slant-
 ing I thought, there were some bruises near. *q* How
 long had you been on the ground where the corpse
 was found before the body was moved. *a* Six or se-
 ven minutes I suppose. *q* How long had others been
 there. *a* I don't know. *q* Who first discovered
 the trail. *a* Boswell. *q* Was it after you started
 with the body that you discovered it. *a* Yes. *q*
 You had been there some time and no person had
 seen the trail till you started with the body. *a* It
 was discovered when we were going away. *q* What
 sized man was the deceased. *a* He was a small
 man. *q* I suppose there is no doubt but that
 the trail was made by the corpse. *a* There is
 no doubt of it. *q* It looked I suppose like
 it had been made by a substance about the size of
 the corpse. *a* It seemed to me that the corpse had
 been dragged by one leg, when the trail was made.
q Was the corpse stiff when it was taken up. *a* It
 was a little stiff when we first took it up, but after
 carrying it sometime it became very limber, so much
 so that we could not keep the feet off the ground. *q*
 Are these the same pantaloons which were shewn to
 you as the pair that were found. *a* I think they are,
 though when I first saw them they looked like they
 had been dragged on the ground. *q* Did you observe
 any cut or tear on the coat. *a* It was torn on the
 back of the collar, as if some person had torn it by
 catching at the wearer. *q* Might it not have been
 made at the same time that the wound on the back of
 the head was made. It might, but I can't say posi-
 tively. *q* Were there any cuts about the shoulders

and sleeves. *a* Yes. (the witness shewed the cuts to the jury) *q* Have you a distinct recollection of the weather about that time. *a* I think it was fine weather for gathering corn. *q* Would not such weather as this be considered fine weather for gathering corn. *a* It was not as cold then as it is now. *q* You say it rained on Friday; did it not snow on that day, *a* I don't know whether it did or not. *q* Was it not cold enough, about the time of the Presidential election, to have fire throughout the day. *a* I think not; very little fire was necessary about that time; the week before the election was quite favorable. *q* Was there not a chew of tobacco in the mouth of the corpse when it was found. *a* I was told there was. *q* Did you see the Tobacco. *a* I did not. *q* Did the bruises on the breast retain the same appearance that they had, when the corpse was first found. *a* No; they changed in color. *q* Were they on the upper side of the corpse when it was found. *a* The corpse was lying on the right side with the left hip uppermost. *q* Did you direct the attention of any person to the change in the appearance of those bruises. *a* I don't recollect that I did; though I mentioned it to several.

Q. While the corpse was at your house was there a fire generally kept in the room with it. *a* Yes; it was quite a large room. *q* Was not the room generally crowded. *a* A good many persons were generally in it. *q* Have you never about the first of November, known a dead carcass to lie eight or ten days without putrefaction. *a* I never knew any to lie that long at that season. *q* You think then in that space of time, at that season of the year, putrefaction would not take place. *a* I never knew any thing dead, to lie that long at that season of the year, without exhibiting greater symptoms of putrefaction than Baker did; it was remarked the morning after

the c
been
ine a
was l
quest
had;
time
his b
q Di
have
were
tobac
are h
They
had

W
The
the r
you
a It
seen
at Fl
Did
burg
did it
to m
did n
sha's
has t
bridl
dle v
a
at ni

M

the corpse was found that he did not look like he had been killed more than one night. *q* Did you examine any other of the clothing before the inquest was held. *a* I did not particularly, till after the inquest. *q* Did he have a glove on one hand. *a* He had; it was a mate to the one that was found sometime previously I think; there was a cut on one of his hands, which appeared as if it had not bled any. *q* Did the glove which had been previously found, have a cut in it. *a* No. *q* Was it bloody. There were some stains on the inside but they looked like tobacco stains. *q* Are those woolen gloves, which are here with the rest of the clothes the same. *a* They were a new pair of worsted gloves; one of them had a small hole in it.

Questions by counsel for prisoner.

Was not the finger of one of the gloves cut. *a* The thumb was. *q* Were all the clothes carried into the room to the grand jury. *a* They were. *q* Did you say it was night when Desha came to your house. *a* It was about eleven o'clock at night. *q* Have you seen the mare in this place. *a* I never saw her only at Flemingsburgh, I would not know her now. *q* Did you shew Mr. Moore the saddle in Flemmingsburgh. *a* I did, it is now in my possession. *q* How did it come into your possession. *a* It was brought to my house with a blanket, by a black boy whom I did not know; he might have been one of Gen: Desha's. *q* Do you know him now. *a* Gen: Desha has twenty blacks that I dont know. *q* Were the bridle and pocket book brought to you. *a* The bridle was not, but the pocket book was.

And the Court adjourned until Monday morning at nine o'clock.

MONDAY MORNING, JAN: 24, 1825.

Met pursuant to adjournment.

DAVID BALLEW GAL, introduced and sworn.

Stated that Isaac B. Desha came to his father's at the Blue Licks the week before the murder was said to have been committed, that he and Desha between them broke one of the ferrils on Desha's whip, that Desha took his knife and trimmed the border off of that, as well as the other ferrils on the whip, & that the fragments of the whip which were found on the ground where the murder was committed, could not be the fragments of Desha's whip, unless Desha had another set of ferrils put on his whip after he trimmed the borders off at his father's. He further stated that after the corpse was found, some men came to his father's inquiring whether Baker the deceased had stopped there, they described the man, horse and clothes; they then went over to Moore's, Moore recollected nothing of his having been there; they then went to Russel's, Russel recollected that the man had been at his house, and after describing him and his mare to Moore, Moore then recollected of his having stayed at his house.

Questions by counsel for prisoner.

What men were they who came to your father's inquiring after the deceased, *a* Mr. Fielder, Chancellor, Dye, and others. *q* Having seen Desha cut the borders off of the ferrils of his whip, you have no hesitation in saying that these are not the fragments of Desha's whip. *a* This cannot be Desha's whip without there have been a new set of ferrils put on it.

Questions by attorney for Commonwealth.

On what day did Desha break the ferril off his whip. *a* I can't tell exactly; Desha was at my father's twice that week. *q* Was it the first or last time that he was there. *a* I think it was the last time. *q* Did you say that the ferril on the whip was

broke
q Was
 to the
 both t
 replied
 many
 tively
 but; t
 that g
 which
 have t
 itive.
q Was
 large
 tolerat
 place
 You s
 father
 the de
 Moore
 to Mo
 know.
 Then
 heard
 not rec
 Russe
 then r
 I hear
 presen
 one, w
q Was
 was, b
 presen
 son pr
 whip
 were it
 ced it.

broke in your hands. *a* It was broke between us.
q Was it the border next to the but, or the one next
to the lash that he trimmed. *a* He cut the border off
both the ferrils; I asked him what he did it for, he
replied, it made no difference. *q* Do you know how
many ferrils were on the whip. *a* I cant say posi-
tively; I think there were two beside the cap on the
but; the one that was next to the cap was the one
that got broke. *q* Are you certain that is the one
which was broke. *a* I think it was. *q* Might it not
have been the one next to the lash. *a* I am not posi-
tive. *q* Did Desha's whip have a lash. *a* It had.
q Was his whip a large or a small one. *a* It was a
large whip. *q* Had it a large heavy lash. *a* It was
tolerably large. *q* Are you certain that this took
place the week preceding the murder. *a* I am. *q*
You stated there were some gentlemen came to your
father's after the corpse was found inquiring after
the deceased. *a* Yes. *q* And that they went to
Moore's. *a* Anderson and another gentleman went
to Moore's. *q* Did Moore go to Russel's. *a* I dont
know. *q* Did you go to Moore's. *a* I did not. *q*
Then you state from the information of others. *a* I
heard them say so. *q* They stated that Moore did
not recollect that Baker had been at his house, until
Russell described him and his mare, and that Moore
then recollected of his having been at his house. *a*
I heard Moore say so myself. *q* Was any person
present when Moore said so. *a* Mr. Anderson, for
one, was present. *q* Is he here. *a* I do not know.
q Was there no one else present. *a* I think there
was, but I dont recollect who. *q* Was Chancellor
present. *a* I dont recollect. *q* Was there any per-
son present when Desha trimmed the ferrils of his
whip. *a* There were other persons in the porch,
where it happened, but I don't know that they noti-
ced it.

JOHN DESHA, introduced and sworn.

Questions by counsel for prisoner.

State to the jury, when Dr. Harman, Orear, and others left those tracks that led toward the hollow tree where the clothes were found, whether you and others did not pursue them still farther on from the place where they left them. *a* We did; we pursued them up the branch to the distance of one hundred yards, from where the clothes were found. *q* Who were with you. *a* McDonald and others. *q* Where is McDonald. *a* He would have been here but he got his ribs broke and could not come.

Questions by Attorney for the Commonwealth.

Orear stated that the last he saw of those tracks was at the branch, did you follow them still farther on. *a* We traced them to the top of the ridge; the last I saw of them was within one hundred yards of the clothes.

COL. DOBBINS, introduced and sworn.

Questions by counsel for prisoner.

Are you acquainted with Isaac B Desha; say what you know about his character. *a* I have known him from a boy; I never heard anything against him before this; his character stood high with us. *q* Had he not the character of a mild, amiable and honest young man. *a* He had. *q* Was he not universally beloved in the neighborhood. *a* He was.

Questions by attorney for the Commonwealth.

How far do you live from Desha's. *a* About seven miles.

JAMES B. McCHORD, introduced and sworn.

Questions by the counsel for the prisoner.

Were you at Whitaker's when Desha cut his finger; state if it was a bad cut, and whether it bled

fast or not. *a* I was there; it was a pretty bad cut, it bled as fast as it could, not to bleed in a stream. *q* Had Desha shoes or boots on. *a* Shoes. *q* What kind of shoes were they. *a* They were coarse shoes without strings in them. *q* Did he stain his clothes with the blood from his finger. *a* He stained his pantaloons. *q* Was there any remark made about it. *a* Some person spoke to him about it; he said it made no difference as he was a tanner.

Questions by the Attorney for the Commonwealth.

You say Desha wore a pair of shoes. *a* Yes. *q* Were they high or low quartered. *a* High. *q* Were they Monroe or common shoes. *a* They were made to lace up. *q* Were they lined and bound or were they coarse shoes. *a* They were coarse shoes. *q* What time of day did Desha come to Whitaker's. *a* About 10 or 11 o'clock. *q* Did you see him go away with Prather behind him. *a* No; I saw nobody behind him.

BERRY DOBBINS, introduced and sworn.

Questions by counsel for prisoner.

How long have you known Isaac B. Desha; tell the jury what you know of his character. *a* I have known him for some years, I cant say exactly how long, I always considered him a man of the first character; I have had considerable dealings with him, and I always found him perfectly correct and honest. *q* Your occupation rendered it necessary for you to have dealings with him did it not. *a* Yes, he is a tanner and I am a saddler. *q* Was he not a generous and liberal, as well as a correct and honest man. *a* He was. *q* Was he not of an amiable and good disposition. *a* I never saw him out of temper in my life.

Questions by attorney for Commonwealth.

How far do you reside from Desha's. *a* About five miles.

Question by the counsel for the prisoner.

So far as you have heard, was not Desha universally beloved and esteemed. *a* From what I have heard, he was.

*ABNER LOGAN, introduced and sworn.**Questions by counsel for prisoner.*

Have you known Desha long, speak of his character. *a* I have known him from a boy, I thought him a man of as good a private character as I ever knew. *q* Was he not of an amiable, friendly, good disposition. *a* I thought so; he was a man of a very good condition. *q* Were you not schoolmates together. *a* We were; he had a good disposition then.

Questions by the attorney for the Commonwealth.

Do you live in the neighborhood of Desha. *a* Yes. *q* How far from Desha's. *a* About a mile and a half. *q* How long have you lived there. *a* From a youth, until last summer, which I spent in Flemingsburgh.

*PETER W. APPLGATE, introduced and sworn.**Questions by counsel for prisoner.*

How long have you been acquainted with Isaac B. Desha. *a* Ever since he was an apprentice. *q* Have you ever known any thing amiss in him. *a* I never have. *q* Was he not a man of a mild, amiable disposition. *a* He was; I never knew him to get into any scrapes; he was a man of the first kind of character. *q* In your transactions with him was he not always just and generous. *a* He was; he always paid me punctually.

*JAMES G. BAILY, introduced and sworn.**Questions by the Counsel for the prisoner.*

How long have you known Desha. *a* Perhaps 12.

er 15 years. *q* Did he not go to school to you. *a* It was to my brother. *q* Did he not board with your father. *a* He did, but I was not living at home at that time. *q* Both as boy and man was he not mild, generous, and just. *a* That was his character; before this charge, I never heard of his being in any broil; I never heard him complain, even of being treated amiss.

LEVI VANCAMP, introduced and sworn.

Questions by counsel for prisoner.

How long have you known Desha. *a* I have known him from a boy. *q* Is not his character that of an amiable, mild, and friendly young man. *a* It is. *q* Is not that the character he bears in the neighborhood. *a* Yes.

SAMUEL FORMAN, introduced and sworn.

Questions by counsel for prisoner.

How long have you known Desha. *a* I cant tell exactly I did not know him until after he was an apprentice. *q* State his character. *a* As far as I know, his character stood fair; he was a clever, honest young man. *q* Is not his general character that of an honest, amiable young man. *a* As far as I know it is considered so.

ARCHIBALD WIGGINS, introduced and sworn.

Questions by counsel for prisoner.

How long have you known Isaac Desha. *a* I knew him when he was very small, until he went to learn his trade. *q* Did you know him after he had learnt his trade. *a* Yes. *q* Has he not always borne the character of a mild, amiable and honest man. *a* I think so. *q* Is not that his character in the neighborhood. *a* I always heard him called such.

Questions by attorney for Commonwealth.

Do you live in the neighborhood of Desha. *a* I live in about three miles from his house. *q* Speak of his character for the last three or four months before he was arrested; was it not said that he was somewhat dissolute. *a* Not that I have heard of; I have seen him at public gatherings, but never saw him drunk. *q* Has not, in the last five months, report said, that he was dissolute. *a* Since this charge was brought against him, I have heard something of it; but I never saw him intoxicated, he was always friendly and sociable.

SANDFORD MITCHEL, introduced and sworn.

Questions by counsel for prisoner.

State to the jury how long you have known Isaac Desha, and what is his character. *a* I have about the same statement to make, that was made by Mr. Wiggins. *q* Has not Desha the character of a good disposed, amiable, honest man. *a* As far as I know his character is good in that respect. *q* You travel about a good deal and have had a good opportunity of knowing; what does report say about his character. *a* I know of no blemish on his character in any way.

Questions by Attorney for the Commonwealth.

For the last five or six months has not report given him somewhat of a bad character. *a* Since this suspicion arose against him, I have heard some reports. *q* Had you heard none prior to it. *a* No, not a word; he was spoken of, as an industrious, good neighbor.

————— *McGINNIS, introduced and sworn.*

Questions by counsel for prisoner.

Speak of your acquaintance with Desha, and of

his character. *a* I have known him for some years, his character stands as fair as any of the neighbors. *q* Was not his general character, before this charge against him, unblemished. *a* I think it was. *q* Did you ever hear any thing to the contrary. *a* I never saw nor heard any thing amiss of him before; his character was fair I believe. *q* Was you not some time last summer, attacked by two men in the night. *a* It was only a report; it arose from some fun in plaguing one of the neighbors.

MAJOR ANDERSON, introduced and sworn.

Questions by prisoner's counsel.

Speak of your acquaintance with Isaac B. Desha and of his character. *a* I have known him from a small boy; I never heard any thing against him till now. I have frequently dealt with him and always found him honest. *q* Is he not a man of mild disposition. *a* I thought him remarkably so.

THOMAS PRATHER, introduced and sworn.

Questions by counsel for prisoner.

Speak of your acquaintance with Desha and of his character. *a* I have known him ever since he was a boy, he stood fair among the neighbors. *q* So far as you have observed, was not his character fair and unblemished. *a* It was as fair as any man's. *q* Was he not in his disposition amiable, mild, and liberal. *a* I always thought so; he was respected in every company he went in.

EDWARD DOBBINS, introduced and sworn.

Questions by counsel for prisoner.

Speak of your acquaintance with Isaac Desha and of his character. *a* I have known him for about two

years; I have often seen him in company, he behaved as correct as any man; I never heard any thing amiss of him.

ARCHIBALD LOGAN, introduced and sworn.

Question by counsel for prisoner.

Did not Isaac B. Desha serve his apprenticeship with you; state what his character is. *a* He lived with me from Oct. 1817 till May 1821; he behaved as well, as to industry, sobriety and morality as any one. *q* Was he not accommodating as to his disposition. *a* He was more so, than the most of young men are; he was not only respected in the neighborhood but beloved. *q* Is it not your habit not to keep apprentices unless their conduct is correct. *a* I have no apprentices bound to me I always make it a condition to separate whenever either of us may choose. *q* Do you carry on the tanning business extensively. *a* I have from the time I was 21 years old. *q* Have you had many apprentices. *a* A good many. *q* Among all of your apprentices have you ever had a better disposed, more industrious, agreeable young man than Desha. *a* I never had but one that was as agreeable in the family as he was. *q* Was he not a better disposed young man than any of your apprentices. *a* I never had but one with whom I was as well pleased; Desha was moral and industrious; I thought he would make a first rate workman.

HARRY BERRY, introduced and sworn.

Questions by counsel for prisoner.

Speak of your acquaintance with Desha and of his character. *a* As long as I knew him I thought he stood high in society. *q* Was not his character that of a temperate, amiable and honest young man. *a* I always viewed him more so than common. *q* Desha, before this affair, had not long been married had he. *a* Not long 9 or 10 months perhaps. *q* Whom

Will he marry. *a* He married a daughter of Col. Pickett. *q* Was not his wife when he was arrested in an advanced state of pregnancy. *a* So it has been represented. *q* Is not Col. Pickett one of the most respectable men in Mason county. *a* He is. *q* Was he not a Senator from that county. *a* Yes. *q* What were the circumstances of Isaac B. Desha. *a* He was in good circumstances; he owned an elegant farm and first rate tanyard.

GEN RIED, again called.

Questions by counsel for prisoner.

Are these the gloves that were supposed to belong to the deceased. *a* I think they are the same; one of them I took off the hand of the corpse, the other one which had been previously found was said to have had blood on it, but I never saw any. *q* Has the one you pulled off the hand been washed since. *a* It was not whilst it was in my care; it had no blood on it. *q* Speak a little more particularly about the hole in the breast of the shirt and waistcoat. *a* If it was there I never noticed it before. *q* Would you not say as positively as you would speak of any negative fact, that it was not there. *a* I don't think there was a hole in any article of clothing that I did not notice. *q* Your conviction is then that it was not there. *a* I examined so close, that I must have seen it if it had been there. *q* You spoke of a cut in the waistcoat on the edge of the arm hole, was this the only cut you saw. *a* That was the only cut I saw; I was astonished when I heard the hole on the breast of the waistcoat spoken of. *q* Was not the clothing in the room with the Grand Jury some time. *a* They were. *q* Did you see any thing of them afterwards. *a* Not till I saw them here. *q* Who took them to the Grand Jury. *a* I did.

Questions by the attorney for the Commonwealth.

Did you on your first examination of the corpse notice the small wound on the breast. *a* I did: as well as every other wound; I think there were but four wounds on the head. *q* How large was the small wound on the breast. *a* Very small. *q* What was the extent of it when you first saw it. *a* About a quarter or a half an inch long; I opened it with my finger several times. *q* On what part of the breast was the wound you noticed. *a* On the largest breast bone. *q* Was it in a line just above the pap. *a* It was just above the pap, below a small bruise. *q* Do you say that in all your examinations of the clothes, you did not see the small hole in the breast of the waistcoat and shirt. *a* I saw neither of them. *q* You saw the larger cut in the shirt and waistcoat that corresponded did you not. *a* Yes, I laid the clothes on the body to see if they would correspond. *q* Did the wound on the breast exceed a quarter of or a half of an inch. *a* I think it exceeded a quarter, but was not a half inch. *q* You said I think that the body was kept in a large room with a fire in it. *a* It was; we kept fire within the room throughout the day. *q* Was it not kept in the cellar part of the time. *a* It was put there on the first night on several accounts, in the morning it was brought up. *q* How many nights was it in your house. *a* Two. *q* What did you say about the beard. *a* It was very short when I first saw it; I observed at the time that he could not have been shaved more than one day and a half. *q* Did you say that there was no fire in the room at night. *a* Only what was left in the day; I placed the corpse off from the fire between the doors, the doors were kept open. *q* Where did Desha sleep at your house. *a* He slept up stairs; the second night he went to bed before the rest did; the second morning he staid up stairs, I sent his break-

fast up to him; he seemed to rest as well there as any where. *q* Do you know where Dennison lives. *a* I do. *q* How far from Doggate's to Dennison's. *a* Not more than a mile. *q* Do you know where the road turns off from Doggate's to Dennison's. *a* There are two roads that come in at Doggate's, I never have been along either much; I don't know where the road turns off to Dennison's on this side of Doggate's, I've been the road round the ridge from one place to the other.

BENJAMIN BALL, again called.

Questions by counsel for prisoner.

Do you know Thomas Davis. *a* Very little. *q* Have you had any dealings with him. *a* No.

Questions by attorney for the Commonwealth.

Are these the gloves you spoke of in your evidence before. *a* Yes; they look like them. *q* One of these gloves was on the hand of the corpse. *a* Yes. *q* When did you first see the other. *a* I cant say exactly, but I think it was the Thursday or Friday, before the corpse was found. *q* Did you notice it when it was first brought to your house. *a* I did. *q* Were there any marks of blood on it. *a* There was in several places. *q* Are you satisfied that there was. *a* Yes. *q* Have not the gloves been washed since. *a* They were both washed at my house; Gen. Reed told the negro woman to wash the things and he would see her paid. *q* The washing was done at the request of General Reed. *a* It was. *q* Were you particular in examining the cuts on the clothes. *a* Yes; Gen. Reed requested us to do so. *q* Speak of the wounds on the body of the corpse. *a* There were three red spots on the breast; they looked like they had been bruised; one seemed like it had a hole in it, but it did not go far; I saw three little holes in the waistcoat. *q* Shew the cuts you saw on

the waistcoat. *a* (The witness shewed two cuts in the vest, the one perforated through the left breast, the other cut in the edge of the left armhole.) *q* Did you notice on that day this small hole. (Alluding to the one perforated through the left breast.) *a* Yes. *q* Did any blood run from the corpse after it was found. *a* I dont believe any did till after it was washed; the blood on the shirt looked old and smelt. *q* There was a deposit of blood behind, about the arm, that smelt bad, was there not. *a* Yes; behind him in the shirt and waistcoat. *q* Then you dont recollect of any fresh bleeding of the corpse. *a* None only from the washing. *q* Was the corpse taken from your house that night. *a* Not till next morning. *q* How far is it from Doggate's to where the road turns off to your house. *a* It is something like a quarter of a mile. *q* Does it turn off on the other side of Allen's. *a* Yes; on the other side from Doggate's. *q* Where does Dennison live from Doggate's. *a* He does not live on the road to my house; the path to Dennison's turns off between Doggate's and Allen's.

Questions by counsel for prisoner.

At what time did you examine the waistcoat. *a* On the evening the corpse was brought to my house. *q* Was it in the night. *a* Yes; Gen. Reed requested us to examine the clothes. *q* This I suppose was before the clothes were washed; did you examine them after they were washed. *a* Yes; next morning. *q* Did Gen. Reed direct all the clothing to be washed. *a* Yes; even to the suspenders. *q* Did you shew the glove that was found, as a mate to the one on the hand. *a* It was shewn as a mate and washed with the other things. *q* Gen. Reed told the negro woman to wash the clothes in general without mentioning any thing particular, did he not. *a* He said all the things belonged to the dead man; and I be-

lieve he told the woman to wash the other glove to see if it would match the one on the hand. *q* Have you conversed with anybody on this subject. *a* I have, with a good many persons. *q* Have you not been examined particularly with respect to the small hole in the waistcoat. *a* No, not that I recollect of. *q* Were you not unwilling to let the corpse go into your house. *a* I said I rather it should not. *q* Do you recollect what you charged for the trouble you were at. *a* I said I thought my trouble was worth ten dollars, and said if I did not get that I would charge nothing. *q* Have you received it. *a* No. *q* Do you say you never have received any money. *a* Not on that account. *q* You say you have received no money belonging to the deceased. *a* No, not of any person; I got what was in the pantaloons. *q* How much did you find in the pantaloons. *a* Seventy-one dollars. *q* What part of the pantaloons was it in. *a* In the watch fob. *q* Do you retain that money yet. *a* Yes. *q* What kind of money was it. *a* Gen: Reed said that it was United States paper. *q* The ten dollars you charged, you meant in specie did you not. *a* There was nothing said about that. *q* Then you choose to keep the whole. *a* I kept it. *q* You wanted ten dollars out of that, did you. *a* I said I thought ten dollars was little enough. *q* Were you willing to give up all but ten dollars. *a* That is what I said I would charge. *q* You meant ten dollars in good money did you not. *a* You may take it as you like.

Questions by attorney for Commonwealth.

You know which you intended, which was it. *a* I did not say either.

Questions by counsel for prisoner.

Which did you mean. *a* (The witness equivocated some little in answering; but at length said, that he expected it would be ten dollars in good money.)

q Was the money all in paper. *a* Seventy dollars was in paper, and one in specie. *q* You were willing to give Gen: Reed the clothes, but not the money, were you not. *a* I wanted to keep both, but Gen: Reed said he must have the clothes to shew. *q* You said you were willing to give up the money if he would let you retain ten dollars out of it. *a* Yes, and I told him I would receipt to him. *q* Then the reason you would not give him the money was because he would not allow your charge of ten dollars was it. *a* Yes. *q* Did Gen: Reed say he wanted to account to the relations of the deceased. *a* Not that I recollect of. *q* Have you spent any of that money. *a* No. *q* Have you the whole of it now. *a* I have. *q* Which time did you examine the waistcoat most particularly, before or after it was washed. *a* I examined it particularly both times. *q* Did you see the small hole in the left breast of it both times. *a* I did. *q* Did you call the attention of any person to that hole. *a* I did not. *q* Were you present when the corpse was washed. *a* I was. *q* Did you say you saw no fresh blood. *a* I saw none but what was mingled with water. Did you see the trail where the body was found. *a* Yes. *q* Could you see it plain. *a* Very plain, I saw where the leaves had been dragged, but I did not see where any chumps had been moved. *q* You did not see but one wound on the body of the corpse, where the skin was broke. *a* Only one. *q* Were not the lips of the wound on the breast too large to have been made by the same instrument that cut the small hole in the waistcoat. *a* It did not look like it was. *q* You said there were three spots on the breast. *a* Yes. *q* Put your hand on your own breast where the wound was on the breast of the corpse. (The witness placed his finger just above the pap of his RIGHT breast) *q* Did you see the corpse at Gen: Reed's. *a* I looked at it but did not go very close to

it. *q* Were the bruises on the breast red when you saw it at Reed's. *a* They were a blackish red; like the blood had settled there.

Questions by attorney for Commonwealth.

By what authority did Gen: Reed demand the money of you. *a* He did it without any authority.

q Has not Gen: Reed heavy claims against the estate of the deceased. *a* I expect he has. *q* Who was with you when the money was found. *a* Arthur McGow.

q Have you ever concealed that you found it. *a* No, I always offered to give it up to the proper person, when he should apply. *q* Have you ever been called on to shew that money on trial. *a* No;

I can shew it now if necessary; I have it with me.

q Do you recollect whether the attention of the inquest was directed to the small hole in the breast of the shirt and waistcoat. *a* I dont recollect.

GEN. REED, again called.

Questions by counsel for prisoner.

Was the glove that was on the hand of the corpse washed. *a* It was not while in my possession. *q*

Was it given to you the evening the corpse was found.

a It was, but I left the things at Ball's that night.

q Did you direct it to be washed. *a* No; I told the woman to wash the shirt and waistcoat. *q* Did I

understand you to say that the wounds of the corpse

healed. *a* Not till after the second examination. *q*

Point to the place where the wound was on the

breast. *a* It was on the left breast just over a bruise

that was above the nipple. *q* Tell what you know

in relation to the money that Ball found. *a* The

morning after the corpse was found Ball brought the

money to me wrapped in a piece of paper, I took it

and dried the notes by the fire; I told Ball to keep it

that it would do to discharge the expenses; he said

he would keep it subject to my order. Before the

money was found I had a very plain coffin made, I afterwards had a better one made and buried the corpse decently; then sent to Ball, as he had promised to defray the expenses for the money, but he would not give it up. I only wanted the money to pay the funeral expenses; I charged him nothing for the trouble I was at myself. *q* Tell what passed between you and Ball. *a* I had the witnesses summoned to attend the inquest, and among the rest Ball and his sons; Owings directed Ball to bring the money with him; after Ball came I spoke to him about it, he said he had found the money and unless it could be proved that it belonged to Baker, he had as much right to it as any one; I was afterwards called on to pay for coffin &c, I then told Ball if he would give me the money I would allow him \$5 for his trouble and would give him an indemnifying bond besides; I told him I was willing to refer it to Squire Morris & another person; Squire Morris drew up a memorandum indemnifying Ball, but it would not do, as I would not allow his charge of \$10. I told him I would allow no such account; I had written to Baker's friends that I had \$71; expecting I could get it any time. Ball refused at first to give up any of the money, but afterwards said he would give up all but \$10. *q* You offered him you say \$5 in specie. *a* Yes *q* Was the corpse carried into Ball's house. *a* No; it was put into the porch. *q* Do you know whether the body was putrid or not. *a* Some said the blood smelt bad; I remarked next morning that there was less smell about it, than I ever knew about a corpse.

Questions by Attorney for the Commonwealth.

There was nothing on the body but a waistcoat and shirt, was there. *a* I think there was a pair of socks. *q* Did you request that the clothes should be washed. *a* Yes. *q* Were the socks washed. *a* Yes. *q* When were the shirt and waistcoat washed

(In I
q Was
 the de
 backw
 Yes.
 the co
 it was
 a Yes
 room
 carried
 ily roc

Q
 Deta
 Ried a
 posses
 versati
 at Rie
 there.
 Ried v
 in the
 said th
 let Ri
 expens
 young
 thought
 tion of
 think I
 they re
 Ried b
 The s
 weeks
 he did
 from tl
 object
 to rece

In less than ten minutes after they were taken off.
q Was there not a general reluctance to approach the
 the dead body. *a* In the woods they were quite
 backward. *q* Were they not so at Ball's too. *a*
 Yes. *q* Was it not on account of Ball's wife that
 the corpse was not carried into his house. *a* I think
 it was. *q* Is not your house a large roomy house.
a Yes. *q* Was the corpse carried into the family
 room at your house. *a* No. *q* Could Ball have
 carried it into any other room at his house but his fam-
 ily room. *a* No he could not.

—————*MORRIS, Esqr. introduced and sworn.*

Questions by attorney for the Commonwealth.

Detail the conversation that passed between General
 Ried and Mr. Ball with respect to the money in Ball's
 possession. *a* I recollect of having heard two con-
 versations between them on that subject; the first was
 at Ried's on the Wednesday evening the corpse was
 there. I think the substance of it was about this;
 Ried wanted Ball to give him the \$71: he had found
 in the pantaloons; Ball was unwilling to do it, and
 said that he did not know that it would be proper to
 let Ried have it; Ried said that he had been at the
 expense of paying for two coffins and of hiring two
 young men to go to Col: Picket's for the mare; Ball
 thought that there would be an administra-
 tion on the estate of the deceased and said he did not
 think he would be safe in paying the money to Ried;
 they referred it to me; I thought Ball ought to let
 Ried have the money to defray the expenses &c.
 The second conversation took place two or three
 weeks ago. Ried made the same statement
 he did before and added that he had received letters
 from the relations of Baker, and said that it was his
 object to act from those letters which directed him
 to receive the property of Baker and appropriate it to

defray the expenses.—Ball stated that he had a claim against the estate of Baker for clothing furnished the corpse, for keeping the corpse at his house, and to pay two young men for sitting up with the corpse; his charge was \$10.—Reed was unwilling to allow him that sum; Ball said he would have that or nothing. *q* Were you requested to draw any writings between them. *a* I don't know whether I was requested to do it, or whether I proposed it myself; a proposition of the kind was made. *q* Do you recollect what kind of weather it was about the 1st Nov. *a* I think there was some rain and on one day a little snow. *q* Was the weather unusually warm about that time. *a* I think not. *q* Do you not recollect distinctly that it snowed on the latter part of the first week. I have a strong impression on my mind that it did a little; the first Saturday I was moving some plank it was wet and muddy on that day. *q* Were you at Gen: Ried's on the day of the inquest. *a* I was. *q* Was that before the corpse had been carried to Shannon's meeting house. *a* I understood it was after. *q* Did you see the clothes so as to notice them particularly. *a* I saw the shirt that was said to have been found on the body; it was bloody and marked. *q* Did you notice the position of any of the cuts on it. *a* I did not, nor on the waistcoat either.

Questions by counsel for prisoner.

Did Ried offer to give Ball \$5 in specie, or did he propose to give his bond for it. *a* At the second conversation Ried proposed giving his obligation. *q* Ball would not give up the money unless Ried would allow him \$10. *a* Ball said he would have \$10 or nothing. Ried thought five dollars sufficient. *q* Then Ried was willing to give Ball \$5 in specie, but he wanted \$10 and would not give it up without. *a* Ried would not give him \$10 he said he charged nothing for his own trouble, but he had an account of

money
paid
claim
corpse
though

DOC

Sta
or ten
being
&c. a
much
of the
symp
before
cred
warm
bodie
ing a
factic
has d
ses o
grow
times
tender
a con
lished
that i
factic
occu

G
I a
when

money he had paid out; he told Ball he should be paid for the clothing he had furnished. Ball said his claim consisted of several charges; for keeping the corpse all night, for clothing furnished &c. Ried thought \$5 in specie sufficient.

DOCT. JOEL C. FRAZER called by Attorney for Commonwealth and sworn.

Stated that it was not unusual for a corpse, in eight or ten days after death, to become limber, and upon being moved to discharge from the wounds, nostrils, &c. a part of the serous portion of the blood, in as much as a relaxation of the muscles, &c. and a loss of the coagulable powers of the blood are the first symptoms of putrefaction—that the length of time before any appearances of putrescence can be discovered depends much on the weather, whether cold or warm, and on the manner of death, as he had known bodies to lie throughout the winter without exhibiting any symptoms of it, and as the process of putrefaction is much slower to commence on a body that has died from great loss of blood than in ordinary cases of death—and that it was an error that the beard grows after death; that the collapse of the flesh sometimes occasions an appearance of the kind, but it oftener happened that a swelling of the flesh produces a contrary appearance; it is a late, though well established fact that it does not grow.—He further stated that in some cases he had known symptoms of putrefaction to present themselves even before death had occurred.

BENJAMIN PRATHER, again called.

Questions by Attorney for the Commonwealth.

I am told you omitted to make some statement when you were examined before; what was it. a I

saw under Desha's waistcoat the scabbard of some kind of an instrument which I thought was a dirk, I was sitting down and Desha was leaning against me when I saw it. *q* What did it appear to be. *a* I thought it was silver. *q* Was it at Whitaker's on the day Desha cut his finger., you saw it. *a* Yes.

Questions by counsel for prisoner.

Was this the dirk you saw him have. *a* It was of that color; but I did not see it well enough to be able to tell.

Questions by attorney for Commonwealth.

Describe the knife Desha was sharpening on the whetstone. *a* It was something like a pruning knife, with a sharp straight blade; it was not of the largest kind of knives.

JONATHAN DOUGLASS, introduced and sworn.

Questions by the attorney for the Commonwealth.

State to the jury what kind of weather the first week of last November was. *a* I was laying brick for Mr. January at that time, at night the mortar would freeze. *q* Had you not been working for Mr. January several days preceding. *a* Yes; several days before the 6th of the month, on which day I got some coffee from Mr. January. *q* Was it not too cold for you to commence your work in the morning before breakfast. *a* Yes. *q* Did it not snow on some one of the last days of that week. *a* It did, but I cant say exactly on what day.

Questions by counsel for prisoner.

Did it snow before or after the 6th. *a* I cant tell exactly, whether it was before or after.

Questions by the Attorney for the Commonwealth.

You dont recollect whether the snow was before or after the 6th. *a* I cant say. *q* How much of the work had you done before you got the coffee. *a* I

dont
work

JOH

W

I was
night

tice t

to st

corps

what

q W

been

they

you s

smell

consi

place

in a

you

shine

q Yo

was

quite

was

Was

you

you

in N

but r

was

cool

you

was.

not a

that

don't know exactly. *q* How long had you been at work before it snowed. *a* A few days.

JOHN CHANCELER, introduced and sworn.

Questions by attorney for Commonwealth.

Were you one of the inquest at Gen: Reed's. *a* I was at Ball's. *q* Were you on the ground the night the corpse was moved. *a* Yes. *q* Did you notice the clothing particularly. *a* I did not; I helped to strip the man and put a shirt on him. *q* Did the corpse have a disagreeable smell. *a* It was somewhat so; I got the scent sometimes pretty strong. *q* Were the wounds fresh, or did they appear to have been made any length of time. *a* It was my opinion they had been made sometime. *q* You thought so you say. *a* Yes. *q* Did the blood on the clothes smell disagreeable. *a* Not that I recollect; there was considerable blood on the shirt. *q* What kind of a place was it where the body was found. *a* It was in a considerable hollow, though not steep till you get close to the body. *q* Could the sun shine on the body. *a* I should not suppose it could. *q* You say it could not. *a* It is my impression it was rather from the sun. *q* Were not the woods quite thick around the place. *a* Tolerably so; there was a good deal of undergrowth about the place. *q* Was the hollow steep. *a* It was not very steep till you get close to the place where the body lay. *q* Do you recollect what kind of weather the first week in November was. *a* I think it was tolerably cold, but not disagreeably so; on Monday and Tuesday I was cleaning out wheat; though Tuesday was pretty cool; it rained on the latter part of the week. *q* Did you go to the Blue Licks to ascertain who the corpse was. *a* No, I was not at the Licks. *q* Were you not at Ballengals's. *a* No; it was a son of mine that was there. *q* Were you not on the road upon

that business. *a* Yes, I was; Gen: Reed requested myself and others to go out and make inquiries. *q* Where did you go. *a* We went to Doggates.

Questions by counsel for prisoner.

You say you suppose the sun could not have access to the body. *a* I think the sun did not shine there as much as on the other side of the ridge. *q* Have you in your mind a distinct view of the ground and sun. *a* I should suppose the body was lying on the North side of the ridge. *q* Do you recollect of having noticed the ground particularly. *a* No; but I am well acquainted with it; I was there the next morning. *q* Did the idea about the body's being hid from the sun occur to you that morning. *a* No; but from my knowledge of the ground that is my idea. *q* Did not the body lie on the east side of the ridge exposed to the sun. *a* I think it did not lie to the morning sun. *q* From your house to Doggate's, which side of the road was the corpse. *a* On the left side. *q* Going from your house to Doggate's did it not lie to the east. *a* No, not as fair as if it had been on the other side of the hill. *q* If it was not to the eastern, was it not to the western sun. *a* It might have been.

JOSEPH H. HOLT, introduced and sworn.

Questions by counsel for prisoner.

Speak of the kind of weather about the first of November last. *a* I think it was fine weather for the season; the capital at Frankfort was burnt on a warm cloudy morning; on Saturday I returned to Paris, it was unusually warm for the time of year. *q* Did you not frequently hear the members remark they were afraid that there would be much sickness owing to the warmth of the weather. *a* Yes; frequently. *q* What day did it rain. *a* On Thursday. *q* Did it rain and snow on Friday. *a* I dont recol-

lect th
put up
to rem
perien
weath

NI

Spe
& On
was a
by ma
sickly
and W
ed and
ehurel
out fir
churcl
on the
G
Alt
of the
probat
four d
was sc

JOE

Did
the 1s
ther w
lar da
men v
Do yo
the we

lect that it snowed. *q* Were there not two chimneys put up at the church to which the Legislature had to remove, do you recollect whether the workman experienced any inconvenience from the coldness of the weather. *a* There were; it was unusually warm.

NICHOLAS D. COLEMAN, introduced and sworn.

Questions by counsel for prisoner.

Speak of the weather about the first of November. *q* On the last day of October I rode to Frankfort, it was a very fine day; on Monday I heard it remarked by many persons that they were afraid it would be sickly, owing to the warmth of the weather; Tuesday and Wednesday were fine days; Friday I think it rained and snowed a little; Saturday we sat in the church, the members thought it too cool to be without fire; the chimneys which were erected to the church dried very soon; Sunday was pretty cool;—on the whole I call it mild weather for the season.

Questions by Attorney for Commonwealth.

Although the days were pleasant for that season of the year, were not the nights frosty. *a* I think it is probable there was frost, though the first three or four days was charming weather, the last of the week was somewhat colder.

JOHN M. JANUARY, introduced and sworn.

Questions by attorney for Commonwealth.

Did you not have some brick work put up about the 1st of Nov. last. *a* Yes. *q* What kind of weather was it. *a* I don't recollect about any particular day; the nights though were very cool, the workmen were obliged to cover their work at night. *q* Do you recollect about what time you commenced the work. *a* I can't say positively what day; on the

4th I paid for a wedge; the last grate was delivered on the 3d, the work was then going on. *q* Was it not clear weather but frosty nights. *a* It was.

Questions by counsel for prisoner.

Did the mortar freeze. *a* I can't say that it did. *q* Did you perceive any marks of frost on the work. *a* I have no experience in that line; I heard the workmen say that some scales came off that were frozen.

GEN. REED, again called.

Questions by counsel for prisoner.

State to the jury whether the corpse became stiff at any time before it was buried. *a* After it was brought to my house it became very stiff. *q* Did not on Wednesday or shortly before it was interred, the belly swell very much. *a* It did very much. *q* Was it swelled when it was found. *a* No.

Questions by the attorney for the Commonwealth.

Did you perceive any swelling till the corpse was deposited in a room with fire in it. *a* I did not, but the next morning after it was found the belly hardened. (Quest. by Juror.) Did he have shoes or boots. *a* Shoes. *q* Were the shoes on him when he was found. *a* No.

Questions by attorney for Commonwealth.

You have said something about the beard, what length was it. *a* I remarked I thought it was not two days old. *q* How long was the corpse in your house. *a* From Tuesday morning till it was buried. *q* Had the beard grown much before it was buried. *a* I thought it got a little longer. *q* Might it not have been the effect of your imagination. *a* It is my belief. *q* The difference in the length was barely visible I suppose. *a* I think it appeared longer. *q* Did his face swell as well as the body. *a* Yes.

Quest. by Juror.—Did you discover that his hair had grown any. *a* No; I did not.

Question by attorney for Commonwealth.

What was the state of the weather on the Monday Tuesday and Wednesday after the corpse was buried. *a* I was gathering corn on that week; Monday was not cold; Tuesday was colder; Wednesday was still more chilly; and Thursday was not cold at all for the season.

*STARK FIELDER, introduced and sworn.**Questions by attorney for Commonwealth.*

Were you at Ball's or Reed's while the corpse was there. *a* I was at Ball's the morning after the corpse was found, and at Reed's on Wednesday. *q* Did you examine the wounds on the breast. *a* I did; I only saw one on the left breast; it appeared like it had been made with a sharp pointed instrument. *q* Had it the appearance of a cut that was made with a knife or with a round instrument. *a* I thought it was not a round, though it was a small place; it looked like it had been made with a sharp instrument. *q* Did you examine the waistcoat and shirt to see if there was a hole in them to correspond with the wound. *a* I did not examine them so much as I did the coat; I found a small hole in the left breast of it; I think the waistcoat had likewise a small hole through it. *q* Did you see the wound on the breast probed. *a* I did not.

*DR. CHARLES SCUDDER, introduced and sworn.**Questions by attorney for Commonwealth.*

Did you see the corpse. *a* I did after it was taken to Reed's; I made no examination of it with instruments. *q* Did you examine the shirt and waistcoat. *a* I did not. *q* Did you examine the wounds on the breast. *a* I saw some small wounds but I did not think they entered the body. *q* Did you see more than one hole that penetrated the skin. *a* I was not particular in my examination. *q* Did you observe a-

ny blood or bloody water issuing from the wounds of the corpse. *a* Yes I did. *q* Was it such as would immediately ensue from a fresh wound or such as would result after the corpse had lain for some time. *a* It was such as would result after the corpse had lain for some time. *q* Did you infer that the wounds had been recently made or not. *a* I did not examine those on the head; I did not think the one on the throat had been very recently made. *q* Have you ascertained that the beard of a man will grow after death. *a* I think not. *q* You think it will not. *a* Yes

Questions by counsel for prisoner.

Give us a reason why the beard or hair will not grow after death. *a* Being part of the body I don't think it would. *q* Is not hair a species between vegetable and animal life. *a* I suppose not. *q* Has hair any feeling. *a* I don't suppose there are nerves in hair. *q* Is not hair hollow. *a* Yes. *q* Might it not have absorbed before the death, enough of animal substance to cause it to grow afterwards. *a* I can't tell.

Questions by attorney for Commonwealth.

Is hair any nearer allied to vegetable matter than nails. *a* It is not.

And the Court adjourned till to morrow morning at 9 o'clock.

TUESDAY MORNING JAN. 25, 1825.

Court met pursuant to adjournment.

—————*BASSET*, introduced and sworn.

Stated that he examined the clothes belonging to the deceased, at the time the jury of inquest was held before the coroner, that he recollects distinctly of having at that time noticed a small hole through the left breast of the waistcoat and shirt corresponding with the wound above the left pap on the body. He also stated it as his belief that he then showed it to Genl. Reed.

The evidence being now closed on both sides, before we present our sketches of the argument we think proper to remark, that had the testimony been less voluminous and our task not tenfold more arduous than we at first anticipated, we would have reported the speeches of all the counsel engaged; and in reporting the speeches we have, justice demands of us to say, that we have not arrived at the elegance of diction in which they were delivered, and which no doubt, could we have done, it would render them much more interesting to the reader; we have aimed only at the spirit of the argument and we flatter ourselves that in this point we are not greatly deficient.

On the part of the Commonwealth the jury was first addressed by Mr. Marshall; Maj. Wall attorney for the Commonwealth succeeded him, who spoke in substance as follows:

He said that during the progress of this investigation he had noted, and frankly acknowledged, the great attention bestowed upon the case by the jury; that they had seen the nature and importance of their duty, and hoped that they would feel it until the trial was closed. It was a case of deep importance, of great magnitude, not only as it relates to the laws and to society, but also in regard to the prisoner; upon your decision depends not only his liberty and reputation but also his life; if he is proven guilty the law fixes death as the consequence—if you believe him guilty you are bound to say so—no feeling of whatever character is to influence your decision, and I am confident that you will be governed by the testimony alone.

This is a case of more importance than ordinary criminal causes, the individual who is arraigned before you, has always supported a fair and unblemished reputation; his connexions are high and respectable; these are considerations which have produced such astonishment in the public mind—that an individual who has ever had such good examples set before him, should perpetrate this deed has struck the mind with horror. That consideration is calculated to influence the mind in his favor, to suppose that a person reared and educated as he has been, and who had therefore pursued a virtuous course, should once so far depart from it, is improbable; but gentlemen whenever society is formed, crime will manifest itself—it exists alike in the col-

tage and in the palace. Such being the case no matter how honorable or in whatsoever circumstances the prisoner may be, you must know him only in evidence; your only enquiry is whether he is guilty or not guilty. We did not contemplate nor have we established his guilt by positive evidence;—evidence is of two grades the positive and the presumptive; and if ever presumptive proof could justify a verdict of guilty it will in this case; there is a concatenation of circumstances which settle it upon him.

I will now direct your attention (said Mr. Wall) to some prominent features in the evidence to which alone I mean to advert. The circumstance of Baker and Desha having been seen to leave Doggate's together; Desha directly after having possession of Baker's mare, for which he is unable to give any satisfactory account; the bridle and whip of Desha being on the ground; the pocket book and saddlebags in his possession directly after the murder;—his having had a dirk the day and night before, taken in connexion with the wounds on the breast and the holes in the clothes, all enable you to presume irresistably that he is the offender. Trace the deceased from Moore's, you find that he and Desha meet at Doggate's; they left there together; Miss Doggate says that she saw them ride together two hundred yards; Williams corroborates her statement;—Was Desha not seen afterwards until the perpetration of the deed? Revert to the testimony of Miss Sullivan;—She does not describe either their clothes or their horses, but gives the facts simply as they occurred. What motive could she have had to do otherwise? She made some slight contradictions owing to the ingenuity of Mr. Rowan who examined her, but if disposed to prevaricate, to fix guilt upon Desha, would she not have described the mare, the dress &c. of Desha, for she has ascertained them before this time? We have traced Desha by his own statements nearly to Allen's, and Miss Sullivan saw him pass. Next Milton Ball (who is corroborated by his brother and Wm. A. Pepper) saw a grey mare sometime after breakfast come trotting up in his father's lane, with a saddle and bridle on, and with blood upon her neck and withers; he mounted her and returning the way in which she came he met Desha's horse, without stopping to catch him, he went on and in about one quarter of of a mile from the place where the murder was committed, he met Desha himself walking, with a pair of saddlebags on his arm, without a whip, his finger bleeding, and a pocket book sticking out of his pantaloons pocket, which Ball told him he would lose; they went back and met Elizman Ball, soon after which, Desha discovered that he had lost his pocket book, when they all returned and found it; Milton Ball saw the mare afterwards at Goddard's which on Desha's order he got from Col. Pickett's—Moore proves her to be the same. Elizman Ball says Desha claimed her as having purchased her. Benjamin Ball had been to Pyles' and in returning met Desha who said that he had purchased a grey beast, which supports the statement of his two sons;

(though
tion to
of Des
with B
—taki
he trac
Baker;
in that
you pl
I we
lect th
there
did he
in wha
him th
been f
sought
bloody
note b
back t
Desha
arrives
it Des
prison
Davis
his bri
respon
circun
was b
that h
Desha
tion to
ered.
Chore
and w
to dis
was s
Collin
the d
main
whic
met t
he li
forrit
lays
A
the p

though he cannot identify her; this is the principle evidence in relation to the mare. If it was Baker's how came she in the possession of Desha? He had a little before rode from Doggate's in company with Baker who was on the animal as Desha himself acknowledges;—taking the whole of his statement I ask where is the possibility that he traded for her? If he did, it must have been shortly after he left Baker; and would not this be extraordinary? Is it true? Gentlemen in that part of Desha's statement you may repose what confidence you please, but it is highly improbable.

I would direct your attention for a moment to the bridle. Recollect that according to Ball's statement when he met Desha's horse there was no bridle on him; there was when they left Doggate's; how did he lose it? He says nothing about it, nor does he tell Capt. Reed in what manner he lost it; he never mentions it to Ball, but did tell him that he had lost his pocket book; how far must the bridle have been from the pocket book? O No, Gentlemen he did not wish it sought for; it would have carried them too near the scene of this bloody tragedy; it might have led to some discovery of the unfortunate body not yet cold in death; he prefers losing his bridle to going back to where it was; this accounts for no search having been made, Desha did not think proper to make any such requisition. The horse arrives without a bridle, Desha receives him with one of Ball's: Was it Desha's which McCarty found? If so how came it there, when the prisoner says his horses pulled away from him near Johnson's fork? Davis proves, that at Doggate's sometime before Desha's horse broke his bridle, which he (Davis) assisted in mending; the one found, corresponds with that described by him. When Brown mentioned the circumstance of a bridle having been found, Desha presumed that it was his; how came it on the ground? The irresistible conclusion is that he brought it there. The whip was lost in the same way, and Desha became possessed of the saddlebags at the same time. In relation to the whip, John McChord the day after the body was discovered, found the lead of it near the ground; in a day or two after McChord and Chandler found the other fragments; how came it there? and why broke? Was it Desha's? Although there has been an effort to disprove it, you cannot doubt that it was the same with which he was seen on the day before, and which he started with from Doggate's. Collins believes it is the same from his recollection, having seen it the day before. Desha went from Whitaker's to Doggate's and remained there all night; the next morning Doggate gave him his whip which all the witnesses say was but a stock; where was it when Ball met him, where is it now? Why is it not produced if he has it? If he had it, could it not be brought forward? If he had one with the ferrils cut, why is it not brought here? The best reason is because it lays shattered on the ground, that accounts for it.

A few words as to the saddlebags and pocket book—Collins saw the prisoner the day before, without saddlebags; there was no neces-

sity for having any in his own neighborhood, particularly filled; he had none at Whitaker's that any of the witnesses saw—Prather rode behind Desha from Whitaker's to his (Prather's) mother's and although he had so good an opportunity, he saw none. Desha staid at Doggate's and if he had a pair of saddlebags, Doggate would have seen and recollected them—why are not some such produced if he had them? Yet he was seen within one quarter of a mile of the spot where the murder was committed, with a pair on his arm; that Baker had a pair there is no doubt, and the presumption is that those which the prisoner had was Baker's.

They were found by Harman not in the immediate vicinity, but in the neighborhood of Gov: Desha's in a private place; how came they there? You cannot hesitate to believe that the clothes were Baker's, and Desha was seen carrying the saddlebags in that direction. He has failed to shew you that he had any such, and we have proven to you most irresistably that they are Baker's. There can be as little doubt upon the subject of the pocket book;—the name was torn out with great caution, which when found fits the place from which it was taken; why was the pocket book where it was found? Compare this with Milton Ball's testimony who saw him with one of the same kind, and he had none before;—from the manner in which he was clad, the witnesses say in a roundabout, with pockets like a waistcoat the pocket book could not have been concealed: or if it could, why is not the roundabout produced to shew the pocket? He should have done this; the presumption then is that it was Baker's pocket book which Milton Ball saw in Desha's possession.

In regard to the dirk; Prather stated on yesterday, that at Whitaker's, the day before the murder was perpetrated, he saw one or the scabbard of one under Desha's clothes; that it drew his attention; which corroborates the statement of Davis, who saw it across the room at Doggate's; taking this circumstance together with the wound on the breast of the deceased as explained by Doct: Drake and is it not of great weight? As much as may be said about the wound on the breast being a straight cut, the evidence is clear that it was made with a square or a round pointed weapon, and not with a knife. Take this waistcoat, and although this hole was not observed by Reed, it is proven nevertheless that it was there; examine and see whether it was made with a knife or such like weapon, and if you are not convinced that it was made with such a weapon as Drake supposed, I will yield.

I have briefly ran over the prominent circumstances (said Major Wall) and the plain and irresistable conclusion is this; that Desha when at Doggate's, conceived his bloody purpose, and seduced the too credulous Baker to this private way—when they had arrived at a convenient spot, with this whip he inflicted blow after blow upon the head, until he brought him from his horse, at which moment the horse

Desha then availed himself of his knife & dirk to complete the deed;—these inferences flow irresistably from the evidence. He then takes possession of the saddlebags and pocket book; and pursues the horses, when he meets Milton Ball, and accounts for the manner he came by the mare;—he then shapes his course towards home, until some opportunity offered to examine the pocket book and saddlebags; on examination he finds marks which might lead to a discovery, when he cut the name out of the shirts, saddlebags, &c. I can only account for the bottoms of the saddlebags being cut in one way, it could not have been for the clothing &c. because the strop would have been cut for that; his conclusion was that there was money deposited there, as none had been found inside, nor in the pocket book and to suppose that a man would be travelling from Natchez to New Jersey without money was unreasonable. He knew too that travellers often conceal their money in the most secret place, and by examining this cut you will see that it must have been made with such an intention. Whoever committed the murder did it with the view of getting money and finding none elsewhere, the presumption was strong that it was contained within the folds.

Gentlemen another circumstance. That Desha should have remained on the ground to hide the evidences of his guilt is improbable; he dragged the body to one side of the road, and took time; where was he the next morning? Ball saw him going in that direction about light, and asked him for the use of his work bench, which conversation young Pepper swears that he heard, and states that it was about day; Wm. A. Pepper fixes positively upon the day as being Wednesday, for he had the evening before sent his son to Ball's to get some help about his wheat. Has Desha told you where he was going that morning when Ball saw him? the conclusion is a fair one, that he was going back to conceal the evidences, by scattering them in different sections and in secret places.

Gentlemen, having gone thus far, I will now direct your attention to the evidence on the part of the prisoner. It is proven that at Whitaker's the shoes which Desha wore were of a plain coarse kind, without strings, and a host come in to prove his good character; but what will that avail when there is such a combination of circumstances against him? Gen: Reed has deposed before you; I am charitable enough to suppose him mistaken, but taking even all that he says to be true, you cannot disbelieve the other witnesses who have sworn to the same facts. He says that the body when found was in a chamber, the Doctors tell you that there is nothing more common. He says the wounds looked fresh and discharged blood—the Doctors say it is quite probable. Is it probable that Baker was not murdered on the second? If not where was he from the time that he left Doggates until within one or two days before he was found, for you must infer from what Reed says, that he was not killed on that day, was he killed before Harman found the saddlebags which was on

Wednesday or Thursday? It is agreed that he must have been dead one day before they were found; well if you bring the day on which the saddlebags were found so late as Friday, the murder was on the preceding day; it requires great nicety with Physicians to say whether a body has been killed two days sooner or later. What as to the glove which was found with spots of blood on it, from which the family of the Ball's supposed some persons had been killing hogs? It is said to belong to the deceased because it matched the one found on him;—then it being found on Thursday or Friday, we say that the murder was committed before, will you take the evidence of Reed to make Baker remain in the woods alive all the while? Then as to the limberness, bleeding, and swelling after a fire had been made in the room, take Reed's statement as true, and there can only be one or two days difference. On the subject of the beard; it exists alone in Gen: Reed's imagination. Reed thought that it grew longer but he was mistaken, as the Physicians clearly prove. The most celebrated judges in medical jurisprudence have said that it cannot grow—that it should not, is rational and probable—Physicians say it has that appearance from the collapse of the flesh, and Doctor Frazier says that a swelling gives it a contrary appearance, then how could Gen: Reed see it grow when the body also swelled?

Mr. Marshall has descanted upon the nature of presumptive evidence, and has produced you authorities upon that subject which you are bound to abide by—if no conviction could be had only upon positive evidence, what would be the state of things? It is my opinion that there is a species of presumptive evidence which is as strong as that of a positive nature; though in a classical arrangement, the latter is the first grade. Suppose a gentleman from Mason had come forward and sworn that he had seen Desha perpetrate the deed, and there were no corroborating circumstances, would that be more conclusive evidence than this? No; such a person might be mistaken, or corrupt, or disposed to seek vengeance upon the head of the accused, he might be perjured or bribed—there are a variety of causes to produce perjury. But look at this case, Desha's starting from Doggate's with a whip, no saddlebags nor pocket book; their horses seen together, Desha's without a bridle, his bridle found near the ground—the wounds on the head proven to be made with some heavy weapon; his whip found on the ground—Desha's claiming Baker's property—the wound on the breast made with some peculiar kind of weapon, Desha having such a one—take them all in connection and I ask you in which you would confide? One or two other remarks and I am done; a suggestion has been made that there are one or two individuals on this jury who are from principle opposed to the infliction of capital punishment for any crime; I trust there is no such case among you—upon the policy of the law there may be doubts, but acting as jurors under the law, your principles must yield.

It is y
upon t
punish
ker, at
him g
I ha
shall b
particu
greate
against
the Le
niginat
ing to
I thou
before
gaged
sequer
hio.
tempte
they s
mitted
witness
March
it to p
the Sh
Femi
friend
that t
case a
prison
false a
promp
red t
oner i
why s
I hav
sures
Th
cause
tion c
duties
know
wise
jurors
petra
mean
parit

It is your duty to say whether he is, or is not guilty, not to decide upon the policy of the law inflicting such punishment. Whatsoever punishment follows, you are only to know whether Desha killed Baker, and whether that killing was murder; if any one of you believing him guilty, returns a verdict otherwise you are perjured.

I have taken (said Major Wall,) a desultory view of the case, and shall be succeeded by Mr. Chambers, who attends this bar at my particular solicitation. When I ascertained that gentlemen of the greatest abilities in the state and a host of them, were to be arrayed against me, I felt my inability to meet them—and recollecting that the Legislature had thrown this duty upon my shoulders, when it originated in the district in which Mr. Chambers prosecutes—believing too that the Commonwealth would contend against fearful odds, I thought it my duty, and solicited his aid. Mr. Marshall appears before you at the request of the friends of the deceased; he was engaged in this cause in its incipient stage before a magistrate, in consequence of which he appears, and in that character I am aided by him. Another circumstance, to wit, that of a poney purse is attempted to be taken advantage of, as likewise of too great rigor as they say being exercised in the prosecution. The murder was committed in another county—the Legislature changed the venue—the witnesses were recognized to attend here on the second Monday in March—a special term was called in the interim;—whose duty was it to procure their attendance, was it mine? No; was it the duty of the Sheriff of this county? No; was it the duty of the Sheriff of Fleming? No; then how, only by the interposition of individuals friendly to justice could its end be obtained. Gentlemen have thought that the expenses of the witnesses were borne; but such is not the case as they have sworn. A suggestion has gone abroad that the prisoner was brought here to obtain some undue advantage; it is a false aspersion upon the character of the county—no such motive prompted the change of venue—it was granted because it was believed that prejudice, and improper influence prevailed against the prisoner in the neighborhood where the offence was committed; then why should any aspersion be cast against the county. Those remarks I have thought due to the gentlemen who assist me, and to the measures which have been adopted in the progress of the trial.

I have peculiar feelings Gentlemen on this occasion, I deplore the cause of your sitting in that box, and can feel as much for the situation of an afflicted father, as others; but I have accepted an office the duties of which are assigned by law and I never have nor never will knowingly depart nor shrink from their faithful discharge. You likewise have duties to perform; as citizens you can commiserate, but as jurors you can only know Desha as a prisoner charged with the perpetration of this enormous crime; and you will recollect also that the meanest, the humblest citizen is as much entitled to a fair and impartial trial as the most exalted. I feel gentlemen that I have dis-

charged my duty, that I have kept strictly within its pale and flatter myself that my conscience will never chide me with an aberration on either hand.

Mr. TAUL then addressed the Jury in behalf of the prisoner, and occupied the remainder of the day; and the Court adjourned.

WEDNESDAY MORNING, JAN. 26TH, 1825.

The Court met pursuant to adjournment. This day was occupied by Col. Brown on the part of the prisoner, and after he had concluded the Court adjourned.

THURSDAY MORNING, JAN. 27TH, 1825.

Court met pursuant to adjournment, when Maj. Barry addressed the jury in substance as follows.

MAJOR BARRY—Said, that the law in this cause, had been so fully unfolded and satisfactorily explained to the jury, that little was now left for counsel to perform; that he could not hope more than to give his imperfect views similar to those of the gentleman who had preceded him, and would only add his feeble effort upon this important occasion—it is the object of the laws, and their provisions tend to secure that object, to afford the accused in all cases a fair and impartial trial; the means by which it is to be secured is through the instrumentality of a trial by jury. The great principles which regulate this kind of trial have been established by the experience of ages and are rendered sacred by our constitution; that birthright of English liberty, is the right of every American, and the principles laid down in Magna Charta to secure a fair and impartial trial by a jury of the vicinage, are also embodied in our constitution. If that impartial trial cannot be had in the county where the offence is charged to have been committed, it is the practice in England and in all of our states by some form or other to change the venue. In England it may be obtained upon affidavit of the party, and the delay of application to the Legislature is not experienced. Such is also the practice in many of the States; the practice in this state where such fair and impartial trial cannot be had, has been to change the venue. He said that it seemed to him this course should not be denied to the meanest citizen, that it had been granted even in the case of a negro; it is still difficult to procure an impartial unbiassed jury. In aid of this is the right of peremptory challenge without cause, the manner in which that right is given is worthy of remark; when a crime so horrible as that committed on Baker is known, all society feels an interest in finding the offender. When an individual is arraigned the government throws her barriers around him that nothing unjustly

shall militate against his security. The person to whom his fate is to be submitted is called to look upon the prisoner; he is not only allowed the privilege of conversing with his friends which here the counsel would deny him, but also that of looking in, of reading the countenance of those by whom he is to be tried; souls read each other; and this is given that he may select men whose countenances do not scowl upon him, in whose countenances every expression is wild, and smiling in the presumption of innocence until guilt is proved.

The benignity of the law said (Mr. Barry) is no where more exemplified than in the arraignment of a prisoner, a ceremony deemed essential; the prosecutor was right in observing this great landmark, although justice does not look at it. It is a ceremony performed in all similar cases and gentlemen what does it speak? When a young man of such high character is arraigned it is peculiarly awful; the clerk reads over the indictment to him with the deepest solemnity, and in conclusion demands of him whether he is guilty or not guilty; he answers not guilty; the clerk then asks him how he will be tried, he says the reply, by God and by my Country; to which the clerk replies may God send you a happy deliverance. Who that looks upon the noble countenance of this young man, who that sees him in this important hour, calm & unruffled amidst the clouds which encompass him, who that considers him esteemed in the circle of his acquaintance, when at school kind and benevolent, beloved by all; who that recollects his family and friends their brave and gallant sufferings during our late struggle; who that considers the situation of his wife, amiable in the bloom of youth, but eight or ten months married and an infant that has never yet cast its angel smile upon a father's face; who considering these can witness unmoved this tremendous spectacle.

Maj. Barry then spoke at some length upon the dangerous influence of party spirit, which he thought had given rise to this extraordinary assistance on the part of the prosecution; knowing he said as he did the firmness and ability of the attorney for the Commonwealth in this district, as this was not the first criminal cause in which they had been opposed to each other he thought such assistance was here needless. Surely the prisoner's highly respectable family, the merit which had elevated a parent to the chief magistracy of the state, should not militate against him in a trial the fate of which involved his liberty and life. He said that he would rather his right arm should fall from its socket, oppressed and embarrassed as he was he would sooner seize the plow, or even beg his bread than stoop to volunteer his services against the life of any human being upon earth. The law has made the prosecuting Attorney as well counsel for the Prisoner, as for the Commonwealth; it is his duty to argue the circumstances for and against him, but what security is there when he is placed in the hands of those who are under no such obligation. Merciful God, has party spirit brought us to this! Is the Common-

wealth so feeble as to require this interposition, the raising a money purse and the enlistment of a foreign emissary to accomplish the ends of justice? These gentlemen moreover bring with them a standing in society and a weight of character which are all thrown upon this unfortunate man, but Gentlemen his confidence, his hope is in your inflexible integrity.

Another maxim of the law is, that a prisoner is always presumed innocent until the contrary is proven, the prosecutor tells you that the circumstances thrown around him are presumptive evidence of his guilt, and the prisoner should clear them up, but such is not the case. Another in accordance is that where circumstances marshalled to establish guilt leave a doubt behind, or where the chain is broken, an acquittal is the inevitable result. Mr. Marshall said that he believed Desha was guilty; and Mr. Wall told you that if ever a verdict of guilty could be justified upon presumptive evidence he thought it could in this; but their opinions are not to govern or control your finding. I am sure these remarks must have dropped incautiously, without reflection from the gentlemen, for they are above the influence of improper motives; but coming in any shape from men respectable for talents and integrity they *will* have an influence. The law and the evidence are alone to govern you. The true doctrine upon the subject of circumstantial evidence is to be found in Coke and Hawkins. Mr. Wall tells you that these circumstances combined are more conclusive than if a person from Mason without corroborating testimony, had sworn he saw the prisoner perpetrate the deed because that individual may have been actuated by improper motives such as revenge bribery, &c; but has he also forgotten that circumstances are also detailed by fallible man, subject to similar influence. Natural facts, for instance the affection of a husband for his wife the mother for the infant at her breast, require no proof, but is there any such evidence here that this is Baker's mare?

If there is a *possibility* of innocence, if there lingers a solitary doubt, you must acquit; this is the opinion of the great John Quincy Adams who ranks among the first jurists of the age, delivered in the case of Smith a senator in Congress from the state of Ohio; & mark the difference between what was to be the result of the accusations; Smith if found guilty would have been expelled the house; Desha deprived of life. (Case reported in Hall's law Journal) The question was not as to the guilt or innocence of the accused, but the *possibility* of innocence; if then in this case a possibility of innocence arises if on the part of the prosecution they cannot satisfy your minds so fully & conclusively that not a scintilla of doubt springs up, a verdict of not guilty must inevitably follow. Maj. Barry then adverted to Philips law of evidence. Appendix folio 58. Here you see that the circumstances must be as strong and pointed as if it were directly proven that he was seen to do the act. A remark was made by Mr. Marshall which I thought extremely unfair, which was this; that Desha would not have been sus-

pected unless there was a strong probability of his guilt.--In the revolution in France to be suspected was criminal but never did I think that, that doctrine would be urged in America; that the cry of Crucify him, Crucify him, should be raised and then urged as an evidence of guilt. You must consider what will render a man suspicious. First consider the situation of Baker and the motive which Desha would have had, in killing him; Baker is represented to be a man of ordinary appearance, with no signs of money, an humble traveller prosecuting his journey. subject to intoxication; what motive could there be to rob him? Desha is represented as surrounded with every thing desirable, surrounded with friends of an industrious frugal disposition, a good tradesman, and in a situation to increase daily in opulence; Baker could present no temptation to him. Had Desha been a villain, the association of conjugal bliss, being enthroned in the affections of a charming woman who was about to become the mother of his child would have cleansed his heart, had it been of the blackest hue. His absence from her, placed her image in all its brightness bright to his imagination; can you suppose that with a heart in such a frame he could imbrue his hands in innocent blood? Test the gentlemen by your own experience. Do you see a man suddenly breaking over the bounds of virtue into the regions of vice? No; it is contrary to the laws of God. In vain would it be, to labor from youth to age, to establish a character honorable for virtue truth and justice, if the serpent at one assault could spoil it, he winds his way in the heart by subtlety; points at this and that imperfection, until it is rendered criminal, and the citadel is taken; but it can never be believed that so great a leap could be made from virtue into vice. If the affections of a lovely wife twining around his heart could not induce it, there was still a suggestion hallowed in the Robber's cave that would; Baker had known and been intimate with Bickley the friend of Desha; Desha by his affability and openness had drawn Baker to him and that he should rob the friend of one that he had long respected, allied to him by the same endearing ties; Gracious Heaven is it possible? Can it be believed? Here again was the security of Baker.

What other circumstances would render an individual the object of suspicion? First--The common fame of the country against him and ground for such report. Second: Being a vagrant, wandering about without any visible means of support, and yet Elzman Ball as well as D. vis who are both proven to be of this character are brought here as witnesses against Desha; I do not mention this to fix guilt upon either of them but merely to shew that there is ground of suspicion against others. Third: Being found in suspicious circumstances. Fourth: Behaving in such a manner as to betray a consciousness of guilt as escaping when accused.

The first important circumstance is the possession of the mare, which is said to be the property of Baker; you must enquire into this

as into all the other facts in the cause, not as in a trial of the right of property, where you oppose one part of the testimony to the other and thus arrive at a conclusion; but if a doubt exists, whether it is Baker's mare, you must acquit, according to the doctrine laid down in M'Nally folio 578. You have no right to weigh the evidence; you are bound to place innocence in one scale and the circumstances proven in the other, and if innocence can produce a doubt against the other, the first must preponderate; every point must be made clear as the light in the firmament. It is impossible that you can believe beyond a doubt, from the evidence, that this was the mare which Baker was possessed of; the Ball's saw her, and had much better opportunity to identify her than any others, and yet they could not; they recollected no marks and how is it possible to identify without? The first witness introduced, (whose character I do not mean to assail, but question the truth of his statement) stated that he believed her to be the same that Baker rode when at his house; in the first place Baker stopped there in the evening as a traveller, the mare was taken by the Ostler, and brought out by him, so that Moore had no opportunity of observing her only in the morning just as Baker was about to start. He keeps a public house, on a road much frequented; there were several other persons who left his house the same morning and is it in the course of human events that he should pay particular attention to this mare?

Moore gives it as his *belief* that she was the same, he must say she *was* the same to justify you in finding her so; you are digging gentlemen for virgin truth, without the artificer's glare and tinsel. He can neither identify the saddle nor saddlebags, his occupation forbids it; when asked whether there was a place at the bottom of the saddlebags suitable for carrying shoes, he recollected none; he says the saddlebags appeared to be about half worn, and not very full, but he does not identify them, so that nothing is gained from his evidence upon the subject. He was mistaken in regard to a watch, and when a witness is mistaken in one point, you must receive his other statements with great caution; he says he saw Baker pull out his watch as he believes, but does not recollect whether its metal was gold or silver. What enables him to recollect this, is that when Baker was about paying his bill, (a circumstance which always strikes the landlord with peculiar force) he drew out his watch and took his money from the fob; here was a good reason for his recollecting it, but in this he was mistaken for Davis swears that when Baker rode up at Doggate's he asked him the time of day, another thing, he proves the color of Baker's coat and waistcoat, and I ask you in the hurry and bustle of business, what inducement could any tavern keeper have to notice particularly the apparel of his guests; He thought the waistcoat was of a light color and when asked what enabled him to recollect the mare; he said it was her general appearance. I have seen the mare; she is a common grey mare, nothing remarkable in

her appearance, and I ask you' if you were merely trying the right of property, whether you are prepared to say it was Baker's mare? If nothing unusual had happened, and Baker had without interruption pursued his journey, do you believe that Moore ever afterwards could have recognized him or his mare? Recollect, a party who were anxious to find some trace of such a man, went to Ballengal's and then to Moore's, Moore does not recollect of any such person having lodged with him; they went across the river to Russell's, Russell returns with them to Moore's and awakens impressions, recalls circumstances to Moore's recollection which had quite escaped him. Major Barry here referred to the case of Ridley, (Phillips, folio 51.) to show how evidence may be fabricated not on facts, but to fit circumstances which are found to exist. *There* suspicion arose, and evidence upon it produced his conviction and death; a thousand reports went abroad to fix guilt upon him, which is precisely this case; since the body has been found, innumerable suspicions have gone out to the great prejudice and injury of Desha; *there* superstition was introduced to facilitate conviction, and when that is the case may it not be expected that impressions will have their influence? Impression like contagion spreads from one mind to another equally unaccountable; the slanderer takes out an individual and whispers in his ear with an injunction to keep it silent as the grave; this one takes another and so it flies quick as thought in endless progression, which is the most effectual mode of spreading it. *There* the deceased had received money, and the accused was with him all day and no other person in company; but *here* how many were in the immediate neighborhood? Where were Davis and the Ball's during the day, altho' I do not mean to insinuate that they were the murderers, yet might they not have been? The circumstances in relation to this mare grew up in precisely the same way as in the last recited case; and Moore himself were he on this jury, would say, that his impressions were too light, his opportunity too limited, that he had not observed her with such minuteness as to justify him in finding her the property of Baker.

It is not necessary to spend much time upon the testimony of Davis; when a witness is contradicted in a material point you must doubt all his other statements. Davis says he talked with some wagoners about the mare, but none of them is brought forward to support him; the saddle and saddlebags were on the mare, and is it possible that he could have examined her so closely as to be able to identify her, and not recollect it particularly, as he was ostler, and saddlebags are usually taken? He stated that Desha arrived at Doggate's before night, which is contradicted by the statements both of Miss Doggate and Benjamin Prather;—another contradiction, he swore that he was not in the house after Baker came, Miss Doggate swears he was, that he came in the kitchen to get water for them to wash; again, he tells you that he did not bring out Desha's horse

that morning, Miss Doggate swears that he did. He stated that his reason for observing the mare particularly was, that he thought she would match one of his father's which was fifteen or sixteen hands high, and this but thirteen or fourteen, nor could he tell whether this was a mare or a horse; and this is the kind of evidence upon which Desha's life must be taken! But, Gentlemen this is not the great ground upon which we stand, as you will discover as I proceed; conceding for argument sake, that this was the mare, does it follow that Desha murdered the unfortunate Baker? You will acknowledge that there is a difficulty in accounting for where Desha was, after he parted from Baker, because Desha is not a witness before you. He tells you that he turned off from the road soon after they started from Doggates, but never denied riding with Baker.—When Adam had transgressed, with what art and ingenuity did he endeavour to evade an explanation; and Cain after having slain his brother, when asked by the almighty, 'Where is Abel thy brother?' what was his reply? "I know not, am I my brother's keeper?" This is the nature of guilt; but on the part of Desha there was no evasion, no prevarication; he admits that it was the same man, and that he turned to go toward Densison's. An attempt has been made to prove by Miss Sullivan that Desha rode farther in company with Baker than he says he did; I do not mean to impeach her statement, I will attack it, as if made by my own child. There is something remarkable in her recollection of days;—in seven or eight days she is called on, and can recollect the precise time when he passed, although she can tell nothing of their horses; might they not have been other persons who passed? She cannot tell any thing which happened on any other day, and has no particular reason for her remembrance of this except that she told her people; she could not tell you what day of the month the Friday week afterward was, nor any day save the second of November, and such is the evidence which you have to go on. It is not sufficient for the prosecution that Desha is at a loss to satisfy you where he was, or how he became possessed of the mare;—but Desha has uniformly told the same tale and I will shew you how it is equally difficult for others who are innocent to account for how they came by the same kind of property. Maj. Barry here cited a case where a man had stolen a horse and being closely pursued gave him up to an individual whom he overtook, pretending necessity to leave the road a few minutes; the pursuers overtook this second person in possession and being unable to account for it, was tried and hung. He said, suppose young Ball when riding back towards the body, had been taken upon the mare, how would he have accounted for it? See upon what a slender thread might hang the life of an innocent individual! It is laid down that improbabilities are to be taken sooner than a man should be condemned, the case last cited goes even further. He then cited the case of an uncle who was the guardian of his niece, to whom

a considerable estate was coming. She was missing, and it being recollected that she was heard to say, "pray uncle do not kill me," he was taken up. Time was given him till the next term to produce his ward; not being able to procure her, he found one that greatly resembled her & brought her before the court; the nurse of the girl missing, said that there was a peculiar mark upon her, which not being found on the one presented, the uncle was condemned and executed. Here gentlemen Desha has resorted to none of these devices: could he not have procured a whip, cut off the ferrils as Ballengal says he did at his father's and have produced it? Could he not have brought forward persons to swear to it, and perhaps to prove an alibi? He produces no such whip, brings forward no such witnesses, but trusts to his total innocence. Then if ours was a tale not improbable, if others might resort to such device, is guilt rather to be inferred than its truth? a thousand things may happen in a very short time;—Davis says that directly after Baker came he went out to work and was not any more about the house might he not have communicated the intelligence to some others? Another thing Baker was liable to intoxication, his bottle was called in, its contents drank by the waggoners, another called in of which they all partook; the intelligence might have flown, now Rob Roys, now Bandits, be upon the guard, watch well, the unwary traveller is upon the road, decoy and make him your prey;—Desha turns off the road and presently returns;—in the mean time some one steps in, perpetrates the deed, siezes upon the mare and flies to Desha, knowing the suspicious circumstances providentially thrown around him;—Desha comes innocently by her, and like an honest man returns to the bosom of his family. Who knows where Elizman Ball was at that time? He does not account himself, but he and his brother found the body. — I acknowledge that there is a slight improbability in his having bought the mare under these circumstances, but I cannot believe if a difficulty exists on this point, that you will construe it to the injury of the prisoner.

If in the time that they left Doggate's, until the mare was caught by Ball (which was about ten or eleven o'clock) Desha had killed Baker he must have left evidences of his guilt upon the ground. But not so, Desha purchased the mare in returning home, having got down to tie up his finger which had been cut and was bleeding, his horses left him; and if the body had not been found, no suspicion would have ever sprung from the circumstance. It was natural that having just purchased her he should wish to know her gates, her action &c. taking Ball's statement as probable;—Desha being left handed, and his right finger cut, would account for the blood on the mare; he gets down to tie it and would naturally leave the bridle on her neck;—if he had struck Baker to the ground it would be just as natural that Desha's own horse would have had the bridle over his head as that Baker's should, and it is more probable that the blood

On the mare should proceed from his finger than from the wounds inflicted upon Baker's head, what is more natural? if there had been nobody found, no suspicion would have arisen from this. Did the Ball's suspect any thing? And gentlemen is not their condition a strange one? It is remarkable that Elizman Ball should have been there at that particular time, when the week before he was no where. The bridle was found as naturally it might be; it is said to have been found not far from Johnson's fork on the hill, Desha returning with his horses looses it there, they make no enquiry about it. If it had been unusual for him to ride with saddlebags, would that circumstance have awakened no enquiry with them? They seem to see just what they expected to see. Gentlemen the character and conduct of these witnesses you must have remarked fully; the credit of a witness may be destroyed by the manner in which his testimony is detailed; (authority cited.) Look at Milton Ball, whose manner was far less exceptionable than that of Elizman; did you not observe his conduct to Dr. Desha, who has been prompted in the course which he has taken in this case, by those feelings which are the pride and boast of our nature; was there any thing improper in his course? When called to swear as to the identity of the pocket book, seeing the Doctor suggest something to the counsel. Ball observes, perhaps Mr. Desha, you had better be sworn yourself. How did he act in relation to the saddlebags? When first asked about them he became irritated, and when asked how he came to recollect them he told you that he did not know, but presently said because he had put his hands on them. In relation to the saddlebags it happens that he is contradicted both by his brother and father; Elizman Ball says that he saw none and what would have been better calculated to strike the attention than a man dressed in a round about riding upon a pair of saddlebags and they pretty well filled? Old Ball too, although he had ample time to observe them when they were conversing about the mare saw none; another evidence in his favor is this, he stops as any man would, having purchased a horse to enquire of his neighbor his worth age, &c and what he thought of his trade, is there any thing more common? Beside if Desha had saddlebags and it was unusual for him to ride with them would the Ball's not have noticed and enquired amongst themselves about it? Here are two negative to the statement of Milton Ball in this particular.

As to the pocket book—What discreet man will shew his pocket book, which is too large for his pocket, as they would prove Desha did? In regard to its size they have sworn differently here, to what they did at Flemingsburgh; moreover did they exhibit any particular mark which would enable them to say it was the same? It is just as uncertain, as that McAfee killed his bear. What would a murderer do with the evidences of his guilt? Would he carry them gentlemen in such a manner as to be seen by all who met him? Those saddlebags you recollect too were found. Where? Buried from the light.

secret
penet
throw
with
shown
found
Yo
tonist
gave
cence
the a
Ball's
suffici
cause
for ins
years
went,
gard t
can I
ground
differ
there
dispos
shew
of the
blows
not it
broke
ble, &
al W)
what
to fix
up in
imme
come
the e
Anott
pass
travel
that
comu
from
to go
Desha
ing r
recol
belic

secreted where no human eye could find them?—placed where impenetrable darkness would surround them? No! they were found thrown upon a pile of drifted wood, and the pocket book by them with other things to draw the attention, fifty yards. I think I have shewn you that the evidence of Milton Ball should not be made the foundation of your verdict.

You Gentlemen with the surrounding crowd must have been astonished at the conduct of Elizman Ball and the manner in which he gave in his statement before you—another evidence of Desha's innocence remains from the pocket book, if that had been taken from the murdered man would he have carried it in the manner which Ball says he did? Upon the subject of the whip I do not think it is sufficiently proven that he had none;—for from the evidence in the cause it would be more remarkable to see him without than with one; for instance you meet your neighbor who has been accustomed for years to walk with a cane, and he has none, it strikes you in a moment, there is something extraordinary in the appearance; so in regard to Desha's being without a whip. It is not clearly proved nor can I believe that this is Desha's whip from its disposition on the ground; the cap found here, the lead there, the other fragments in a different place. Is not this management? Were they not placed there with the evident design of being found, and placed by some one disposed to fasten guilt upon this innocent man? I will presently shew you that Desha had not time to do it. The general appearance of the whip is a circumstance which is remarkable; would one or two blows have shattered it in splinters as if pounded and beat up? Does not its general appearance shew that it was not used? If it had been broken in this manner, the balance would clearly have been serviceable, & would have been retained. Prather says he saw him with a whip at Whitaker's, so did Collins who believes it to be the same, but for what reason? He had none, he did not know; this was nothing then to fix guilt upon Desha. In ordinary occasions if this mare had come up in the manner in which she did, would Ball have mounted her immediately without having delayed any time to see if an owner would come, and ride right back the way in which she came? This was the course of the two Balls that morning, they did not wait a moment. Another thing surpassing strange is, that he as if by instinct should pass a plain public road and turn off in a road as he says but seldom travelled and assign for reason that the mare seemed inclined to go that way? Gentlemen does not this reason outrage all reason and common sense? Is it not the nature of that animal to shun, to fly from danger with the wildest precipitation? Would she be inclined to go that way? You answer emphatically no. They rely too upon Desha's having been seen to come from that direction on the succeeding morning;—but what is the proof on this subject;—Ball does not recollect whether it was Monday or Wednesday morning, but it is his belief that he did go that way; a boy is brought in to prove the con-

versation which passed between Ball and Desha on the morning spoken of. Do you suppose Gentlemen that this boy knew what morning it was, before the murder was known, until his father told him when it was? What was there in the conversation to make the boy recollect it? Still further, the father is brought in to substantiate the boy's statement;—he is made to recollect clearly that particular day, but no other;—neither the father nor son can tell any thing which happened on other days. Every step we go develops a combination for the foulest purpose against the young man;—Suppose he had passed; was there any thing unusual in it? The law as I have shown you, makes you infer innocence against improbabilities. Would a murderer have gone at the dawn of day to hide the evidences of guilt? Would he not have chosen the dead hour of night, when all was hushed and not a sound could be heard? This must be construed in favor of the prisoner if you attach any credit to it. Did you not notice the reluctance in producing the glove? Where, when and how was it found? Where is the person who found it? He is not here; he is withheld because something might be brought out of him unfavorable, not to the prisoner but to some who are engaged in trying to fix guilt upon his head.——Old Mr Ball when he heard of a glove's having been found, thought as is proven that there was something wrong;—Why was not a search made immediately? Because the scene was not yet ripe.

The ground work here is in their leaving Doggate's together;—Desha being in possession of the mare;—Young Ball's catching her and discovering a pocket book;—all of which in themselves are perfectly innocent. Now we will proceed to facts which can never err until there is a revolution in the course of nature. The ground is that on the 2nd of November, Desha murdered Baker dragged him from the road, took possession of his pocket book, saddlebags, mare, &c.; remark if you please the time; if they left Doggate's at or half after eight o'clock, it would take them until ten to get to the fatal spot; here are several important circumstances. That McCarty and two or three others passed very soon after; if he was murdered there, there must inevitably have been a profusion of blood on the ground; his throat was cut, the great veins opened, and perhaps the arteries, and will you believe otherwise than that there was blood. It was a conflict in which Baker would have resisted to the last pulsation of heart, there was a long trail from the road to the body, blood at the road, and down the trail, yet four men passed when the blood was still smoking on the spot and did not see it! They were your plain intelligent kind of men not engaged in speculation, nor reasoning upon abstract principles, but hunting through the woods for game; yet all these glaring proofs of a murder just committed spread before them and not to be seen by Lynx eyed hunters, Great God is it possible!! And were it even possible that they could pass and not discover all these signs, their horses would have been affrighted, they

would
cred to
it? I
mare,
guilt f
ber.

der mo
whom
beliefs
must s

The
are the
were l
those
session
that th
day be
clean,
was m
the sh
these c

For
be the
black,
down
grow a
Doctor
stiffen
smell,
fresh t
fresh
one to
recent
arreste
the fir
warm,
putres

And
proves
ment;
point;
that d
or if I
leavin
woun
Reed
on th

would have discovered them, and have given proofs as strong as sacred truth. Still further it was a recent thing; the cloak where was it? It has never been found; Desha went on immediately with the mare, if he had perpetrated the deed he never would have claimed her; guilt from the oldest time in nature lies; he never would have claimed her. The condition of the corpse affords additional proof of a murder more recent. It was painful to me that young Physicians for whom I have the highest regard should give you their opinions and beliefs upon facts which they detailed; the statement of Gen Reed must strike you with force.

The principles is laid down (Phillips app. fol. 20) that the senses are the standard of truth; reason may be perverted. I had sooner, were I a Juror, found a verdict upon the statement of Reed than of those young men although they are justly esteemed; Reed had possession of the body for several days, examined it repeatedly: he says that the blood on one hip looked like the body had been dragged the day before. One side of the waistcoat he tells you was perfectly clean, the neck not bloody; could that have been on him when he was murdered, is it possible? There was no blood upon his face, the shirt collar was cut, and the glove on the right hand was clean; these circumstances support Reed's opinion.

Furthermore he tells you that the bruises looked red, would that be the case if he was about to putrefy? That afterwards they turned black, the beard appeared as if newly shorn. Look at a tree cut down when the sap is up and you will find that the leaves will still grow and retain a vivid appearance so long as the sap will last. The Doctors tell you that after putrescence commences, the body cannot stiffen unless suspended by freezing. When death comes there is a smell, when this body was found there was none; any person can tell fresh blood from old by its appearance and this Reed says looked fresh. Two coffins were made; when the body was moved from the one to the other it stiffened which is a most conclusive evidence of a recent death. Another thing, the disposition to putrescence is never arrested save by freezing. Well it is in proof before you that during the first week in November the nights were frosty and the days quite warm, this being the fact would it not accelerate the disposition to putrescence?

Another circumstance, he had his dirk, and it is a temptation to be proved that the wound upon the breast was made with such an instrument; it is proper to guard against the opinion of Doctors too on this point; (Phillips appendix fol. 35.) if the Doctor had said that he knew that dirk had made the wound, it would have been a different thing, or if Desha had been seen with it in the fight (Phillips app. last page) leaving out of view then that this wound was made with a dirk. The wound near the arm spoken of was made in the conflict without doubt. Reed saw no other. Doct. Skudder speaks of two or three wounds on the breast; Simmeral recollects but one; Ball seems to recollect

something about it; Basset is positive that it was there. Starke Pledger says that it was cut with a sharp instrument and if it had been done with this dirk, as has been remarked in argument, would it have stopped upon the rib? Would not this dirk have penetrated to the heart? Beside would the assassin have changed his weapon; there could not have been, there was but one wound on the breast; this difficulty of an apparent difference in the appearance of the wounds, the instruments used to make them, if there, is insurmountable. I cannot proceed without expressing the gratitude which I feel for the kind attention which you have bestowed on my feeble effort; but it being a case which has excited so much interest in every quarter, so important to the state, and which in a great measure affects its character, I must beg you to wait with me a little longer. On the one hand if the evidence warrants it by your verdict of guilty you will shew to the world that justice shall be done; but on the other hand, if it be not guilty you will wipe off every aspersion which has been cast upon the state and restore this unfortunate man to the bosom of his family.

The body must have remained in the woods from the second, until the night of the eighth November, and was untouched by birds, and wild animals; is this according to the course of nature? Does your experience warrant it? No. The witnesses think that the cut near the arm was made with a small bladed knife; Desha's was of the pruning kind. What would have been Desha's conduct if guilty? I have said that he would not have claimed the mare ever afterwards. It is obvious that he had not then time to dispose of Bather's cloak and other articles. On the part of the prosecution they have endeavoured to shew you that on the morning of the third Desha returned to dispose of the remaining evidences of his guilt;—But first, as to the saddlebags and pocket book, would he have placed them in a condition to become his accusers? Is it not still more improbable that he would have carried them about the home of his father, to the residence of a family so pure, so upright? Would he have placed them near his father's barn, where some of the family were passing every day? Is it in the region of a probability that he would have placed them where they evidently would be found, tho' in a little sink still manifest to the eye, and on the way to water stock? Is it probable that he would place them to be found by his brother-in-law, to make the members of his own family his accusers? Would the murderer have multiplied these evidences? Would he not have carried them to some secret place and buried them in a lump? Would he not have found a place to conceal the body, would he place it near the road? It is at war with probability and common sense;—the first idea is to conceal, then why was not the body hid, and the clothes burnt, if the intent had been to conceal? A child would have known that they ought to be hid; he hides every appearance of guilt and so does a servant.

The body was intended to be found, and who finds it? the very

same
travel
accid
glove
the b
the m
what
Well
robbe
shoul
doubt
from
Forte
his in
To
of pla
taloon
shoes
beel.
there
strong
by De
to De
bet of
sids
An
teek t
spirit
soldie
enqui
ety; b
See th
dead
inter
ces m
the c
ted it
to the
of clo
throp
agent
for w
have
his g
comp
to R

same persons who caught the mare, and they give no reason for their travelling that road at that time;—it was, they say by accident; by accident just there they recollected their brother had found a glove, turning out of the road a little distance by accident they saw the body —Others had travelled the same way the week before, but the body was to be found by none but those who discovered the mare; they did not approach it but gave the alarm immediately, what was the consequence? A search made, which is quite natural. Well the things were scattered in every direction, the breeches not robbed, and all placed near Gen. Desha's farm with the view that they should be found in order to fix guilt upon Desha. No one will doubt but they were intended to be found, and it is equally clear that from the name being cut out the shirts were intended to be used. Fortunate for the accused are these circumstances, for they develop his innocence.

Two witnesses prove that at Whitaker's, Desha wore a pair of plain coarse shoes, if then he went to the place where these pantaloons were hid would there not have been the evident track of the shoes? But it is proven that a small track as if made by a plated heel, was discovered —Who placed them there: Desha? No: there is a track different from his; the track of the assassin;—but stronger as to the saddlebags and pocket book. Orear was invited by Doctor Harman to make some search, and it is highly honorable to Desha's friends that no barrier to justice has been made by them, but on the contrary they have used every effort to accomplish its ends.

And as to Reed, he disregards the slurs of the gentlemen who seek the blood of the prisoner; they will ever see him display the spirit of benevolence and generosity which characterized him as a soldier fighting the battles of his country; his course throughout this enquiry has been marked with dignity, disinterestedness, and propriety; how proud do I make the comparison between him and Ball. See the one subject himself to all the inconvenience of keeping the dead body in his house, preparing it for a decent, for an honorable interment, to effect which he is at considerable trouble, and advances money from his own pocket; on the other hand, old Ball refused the corpse admittance in his house for one inclement night; permitted it at last with great reluctance to remain in the porch exposed to the weather, afforded it perhaps a sock, and washed a few articles of clothing, and for these great services, in the true spirit of philanthropy, he makes his charge of ten dollars in good money! Reed the agent of the friend of the deceased, asks no remuneration except for what money he had actually advanced, and Ball refuses to let him have what money was found of the deceased, without being allowed his generous charge, which Reed did not think proper to do. This comparison I make not to disparage Ball, but to give the elevation to Reed which he so justly deserves.

We come now to notice another circumstance of great importance; after the body was found, and a party were about to make some examination, it was suggested not to go immediately to the spot where it was found, but to take a circuit. When they got back of Ball's field, they fell upon some horses tracks, and what is discovered in pursuing them? The witness is convinced that the horses were rode, from the circumstance of their going around trees &c;—the course which those tracks led is something remarkable, over hills, through the worst places, down steeps which some of the party were afraid to ride, as though to elude pursuit, and the last track is seen within one hundred yards of the place where the clothes were found! Could Desha do this alone? No; others must have done it. If every other fact was insufficient to prove his innocence, this will. I take it for granted that in the confessions of the accused you find the strongest evidence; well follow me whilst I trace him, he has just come from murdering Baker, his horses were taken by those who would become witnesses against him, would he not have been agitated, alarmed? Do you believe that a young man unbacked in vice, could at such a moment feel otherwise? He meets Ball, loses his pocket book and calmly returns for it he goes on and meets old Ball, talks to him in relation to the mare, Ball hurried a separation, Desha wished to talk longer; where directly do you find him? At home with his brother's in the bosom of his family, at his ordinary business, and though Mr. Whitaker thought something was the matter, yet the blaze, the sun shine of evidence disproves it;—Sandridge said Desha was calm and deliberate, and if he had been otherwise there was reason for it; his finger had been severely cut, and he had been kicked by a horse;—beside where is the man across whose mind, some serious thought does not pass every day? By what rule of ethics will you regulate and graduate the human feelings? How much must the muscles be excited? Where is your thermometer to test the state of feeling? What poet in the fulness of his fancy has ever yet essayed to explain it, has ever yet found it out? Pursue him further, and every step gives new proof of his innocence; he goes on an interesting occasion with his wife to her father's, not going about like an assassin; he was there approached by gentlemen of the greatest feeling, whose conduct at that time reflects the highest credit upon them;—my heart was moved when they were about to detail what passed at that interesting period;—I was uneasy when the question was asked the witnesses what he said, but what was the answer? He most solemnly avowed his innocence to them, and when it was mentioned that a murder had been committed in the neighborhood he was still the same, calm, unruffled, manifesting no symptom of alarm. If guilty, and called upon to return to his neighborhood, no human being could have withstood it;—if he had fled there would have been cause for suspicion. What passes whilst they were on the road? He rides along behind the main company, there was no authority to take him, he goes

in ch
are u
arrive
—a s
body
murd
vesta
Bang
the re
proac
sha's
self r
Other
in all
ing it
chara
been
if the
at sel
ded o
—wh
it tha
Is the
cloud
on hi
mond
air.
sha,
he is
acco
celle
askin
heart
that
again
ous
It
the e
that
of a
—no
nevo
living
and
belie
B
fath

on cheerfully to Reed's & unless the laws & rules which govern nature
 are untrue, he acted in a manner to put down all suspicion. When he
 arrived, there was a scene which would have moved the vilest heart;
 —a superstition long prevailed, that when a murderer touched the
 body slain by him, its wounds would bleed afresh:—that he who had
 murdered Baker returning from a foreign enterprize to embrace his
 vestal bride, could approach unmoved his corpse, can you believe it?
 Banquo's ghost could alarm the brave Macbeth, and here to touch
 the reality! How did Hamlet feel when the ghost of his father ap-
 proached him? With what fearful caution did he follow it? De-
 sha's innocence might be rested upon this ground alone; poetry it-
 self never furnished an instance of such total obduracy of heart.
 Other considerations ought to have great weight with you;—you are
 in all cases to judge from the nature of things; the necessities, stand-
 ing in society, inducement &c. (Phillips, app. 14 page.) The
 character of Desha stands without a blemish; he is proud to have
 been an amiable youth, as well by the aged as by his school mates;
 if there is obliquity in character, it shews itself in the morning of life,
 at school; he was never known to be in a quarrel. But it is contended
 on the other side that character is not to be thrown in the scale;
 —why is it that that gentleman and I, are here to day? For what is
 it that the warrior exposes himself to every danger in every clime?
 Is then character to have no weight? Who is there over whom a
 cloud has never passed? The sun shine now rests on us, the cloud
 on him, time may change the scene—what is the sparkling dia-
 mond, or the richest gold to character? they are but trash, as light as
 air. (McNally, vol. 1. folio 321.) Now from the character of De-
 sha, I ask whether he is not the last man who would thirst for blood?
 he is proven to be the dutiful son, the faithful apprentice, the amiable
 accommodating neighbor; in every point of view he supports an ex-
 cellent character; and yet a blow is made at it on the other side by
 asking whether the witnesses within a few month's had not noticed or
 heard of his departure from his usual upright course; they told you
 that never until these suspicions arose did they hear ought alledged
 against him. Will you then take from him his manly, noble, gener-
 ous reputation? Who will question his standing?

It has been insinuated that the relative situation of the accused and
 the executive of the state should prevent you from exercising mercy;
 that however your verdict may be, he will find clemency in the breast
 of a father. The exercise of mercy has not been taken from you;
 —no, to you it belongs more properly than to the Executive—Be-
 nevolence and mercy peculiarly belong to you. You are his equals,
 living in the same community with the same interests the same rights,
 and he selected you because your countenances expressed benignity,
 believing that you would do justice in mercy.

Besides gentlemen you should respect the bond which binds the
 father to the son, than which nothing can be more powerful. Then

If the power has to be exercised by him, who can conceive the extent of his suffering? Will you tear in pieces the human heart? What is equal to the agony of the human mind? Tortures inflicted in all the ingenuity of savage cruelty are nothing, but torture the soul and you inflict the agonies of the second death. Will you torture him with feelings never experienced by any but Brutus? If you love your own son, how would you like his life to be placed in your own hands? How solemn was the occasion, when the good old patriarch was called upon to sacrifice his first born; look at that scene; see how the Almighty God regarded the feelings which bind the parent and the child; Isaac spake unto his father and said, Behold the fire and the wood, but where is the lamb for the burnt offering? And Abraham said, my son, God will provide himself a lamb for a burnt offering. They come to the fatal, the appointed spot; Abraham builds an altar, laid the wood in order, upon which he binds the devoted son, the father stretching forth his hand, takes the knife to slay his son, but the angel of the Lord forbid him from the Heavens. Eternal Wisdom had found another sacrifice. God will in due time find a lamb to atone for the blood of the unfortunate Baker.

Maj. Barry said, that he did not apprehend any danger from the remark of Mr. Wall, although calculated to intimidate the Jury in the discharge of their duties. Do not be alarmed, perjury is not made of the stuff which flows naturally from the heart;—God gives life and it should be taken most cautiously. To tell me that I shall not think, would be to shackle my mind—take my property but leave me my opinion, it must not be invaded. But whilst I contend for the pride of opinion let me not be understood as asking an acquittal on that ground; no there is no danger there; let the waves of popular opinion beat around the rock on which you stand, their noise may be heard, but they will die at your feet; you stand upon a rock, and in sight of God. I mention this not because I believe there is any such here, but to resist the attempt made on the other side.

To impress it on your minds, that you should be clearly, and conclusively satisfied of the guilt of Dasha, to find him so, I will refer you to another authority. (Authority quoted where a man had been seen running out of a room with a drawn sword in his hand, another person dead in the house, and there being nobody else to do it.) I put you this case. Was there no person in the neighborhood who could have done the deed? I name no one because I believe them guilty, but because there is a possibility that they might be;—where was Elizman Ball, those six waggoners, Sullivan, Davis, &c?—(Phillips app. 53.) Who will say that we have not shown a circumstance to break the chain? The chain is broken. Let me call your attention again to what is the true question before you; it is not guilt or innocence but the possibility of innocence. Is there an individual here who came even prejudiced against the accused, that does not doubt? Yes the power of extending mercy peculiarly belongs to you.

Gentlet
I have
and clos
expects
have be
—there
against
the; bu
gotten,
individu
society,
at the h
encoure
what en
but for
hope thi
separat
columny
hereafte
y, that
give no
our o
Desh
see him
who had
the situ
as up
erse th
ere go
robbery
upon th
ailed t
Wha
our ve
ino c
oy you
ng a v
his sur
jury c
hope is
ates of
perhaps
offender

Gentlemen, I feel, and fear that you will feel it more sensibly, that I have wearied your patience, but I will hazard a few more remarks and close. This case is important in every point of view, and society expects you to weigh it well before your verdict is given. It would have been better for this prisoner had he been in an humble situation;—there is a proud feeling in the breasts of freemen, and in guarding against the influence of power, they may transcend the rule of justice; but gentlemen every consideration of this nature should be forgotten, and I hope that he will share the same fate with an humbler individual. His honorable connexions, their rank and influence in society, should not militate against him; his father's standing, sitting at the helm of the government, should not disparage his cause. What encourages the armies to brave the difficulties and dangers of the field, what encourages you and I to adhere to the principles of rectitude, what for the esteem of our fellow citizens? Then I would humbly hope that respectability, the exalted situation of his father should not disparage his case; if in justice you can acquit, you will put down all calumny, cleanse and purify the character of the state;—it may be hereafter found that some of those black legs who throng our country, that some villian has perpetrated this enormous deed. Will you give no consideration to the effect which your verdict is to have, even in our own country?

Desha's bitterest enemy could not wish a greater triumph than to see him situated as he is.—If I had an enemy who had oppressed me, who had dogged and persecuted me through the world to see him in the situation of poor Desha; I could but pity him. Your verdict will fly as upon the wings of the wind, and whether it be favorable or adverse the finger of scorn will always be pointed at him, it will be said where goes a man who has been arraigned for murder and highway robbery. If a man has tears, and cannot shed them when he reflects upon the situation of his wife and child, a child that has never smiled upon its father, his heart must be made of stone.

What will be your feelings Gentlemen, upon your pillow, should your verdict go against him, and it should be hereafter found that he is innocent? Then will you plant a thorn which may in future annoy your peace? How different would be your feelings in pronouncing a verdict of not guilty? It would thrill through every heart in this surrounding crowd with emotions of extatic joy. The mercy of a jury cannot place him above obliquity and disgrace; all that he can hope is, that by a steady adherence to virtue, and pursuing the dictates of morality, he may regain his former standing in society, and perhaps by some interposition of divine providence find out the real offender.

JOHN ROWAN, Esq.—Said that he felt much embarrassed, least more might be expected from his age and experience, than he was able to perform; seeing the crowd which surrounded him, he thought that they were inclined to hear more than the sequel would present. From your indefatigable attention, Gentlemen of the Jury, throughout this whole proceeding, there can be no ground of reproach against you; let me solicit it a little further. I do not mean to whisper a lullaby in your ear, but will present the evidence to your view in its real colours, and draw such conclusions as naturally flow from it, it is unnecessary to admonish you before you lead your attention to beware, least some impression unfavourable to the prisoner should lurk in your bosoms; I would not mention this were it not for the importance of the subject;—the people in different sections of the country have manifested a disposition to agitate this subject. If we could be conscious of the least taint or corruption we would wipe it off immediately, we would not enter upon it, until that was done; we inhale the atmosphere unconsciously, in like manner are our impressions often formed—the sparrow will make a track as well as the elephant; and whilst we look for the vestige of the latter, that of the former is apt to escape our observation. You are surrounded by the multitude, but you are as it were out of the world, you are in the inner temple in the presence of God, the living God; you should then examine all the circumstances with the utmost fairness and deliberation. You must indulge no extraneous impression, no bias, for if in the commencement of the trial you had found any upon your mind it would have disqualified you from sitting in that box. Taking it for granted that you do feel the importance, and the nature of your duty, from your conduct throughout, I would say in the language of the scripture, 'Come now and let us reason together.' If ever there was a necessity for reason surely there is now; by reason we arrive at knowledge.—Something must be known before we can advance, and let us see if in this case there is any thing to produce conviction. I have satisfied myself that you will not only find him not guilty but that he is absolutely so.—It is not important that I should make you know this, but merely shew you that there is ground for a rational doubt; you must be certain, not like the man in the scripture who shot his bow at a venture. Life is certain, there is nothing more so;—it is a precious certainty;—it must be taken, it must be assailed by evidence no less certain; it is a consciousness of identity which is the source of all pleasure and enjoyment. Life is certain, its modes and habits are known; love, revenge, avarice, are distinguished by peculiar marks—bad character is easily distinguishable from good; they have passed over this and the inferences to be drawn from it. Let us see upon that ground who Isaac B. Desha is; whe-

whether he is a good or bad man, from his boyhood up, his character is pro-
 ven to be unblemished. I ask what constitutes a good character?
 You answer universal good deportment; then would you readily believe
 that a man at twenty three years of age, whose deportment up to
 that time, had been marked with propriety and correctness, would
 suddenly desert that course? Have you never noticed how difficult
 it is to relinquish any habit which you had formed, however simple?
 Is a man long accustomed to chewing tobacco, or given to intoxication,
 what a task is it to quit either, although they are both pernicious?
 There can be no motive for forsaking good habits, and in proportion
 to the difficulty in getting clear of bad, is that in quitting good hab-
 its. Is it then to be supposed that a man at Desha's age who had
 therefore always pursued a moral, upright course, and he too in ear-
 ly circumstances, that he would depart from that course without the
 strongest inducement? Man acts from motive. The highway is re-
 sorted to, by men of vicious habits, and it is not very unusual for a
 man who had been badly raised, into whose mind no virtuous princi-
 ples have been inculcated, to do this; but even then, heaven has formed
 us averse to crime of so atrocious a character, and when the aban-
 doned robber commits a murder, it is not because he delights in blood,
 but that his wants, his necessities, force him to it. Man is organi-
 cally formed opposed to the shedding of blood; and is it reasonable
 to look for such a thing in innocent virtue? If a man who had been
 badly raised, of a loose, profligate abandoned character, dislikes to
 commit such a deed, would you believe that a man of Desha's stand-
 ing, a man in his circumstances, would imbue his hands in blood?
 You will lay this down, that a man is averse to shedding the blood of
 his fellow man; you would require great proof, that even the most aban-
 doned had done it; you would require still stronger evidence if it
 was alleged that a father had killed his child. And should it be
 charged that a father and mother had conspired to take the life of
 their babe, what would be the proof which you would require? It is a
 principle then that in proportion to the probability, must the proof be;
 you will therefore require stronger evidence in this case than if a man
 of an abandoned character was arraigned.

Before we proceed to take a survey of the character of Desha, do
 not forget Gentlemen that he is like you and I, who act from mo-
 tive; his character was formed. In forming character there are ma-
 ny aberrations from the course of proper conduct; man does wrong,
 he repents and reforms, goes on from one step to another until he ac-
 quires virtuous habits; and if Desha when a boy, could not be tempt-
 ed to transgress; if in youth when virtue is not expected to be settled,
 he was unshaken, would he at mature age, when he was enjoying the
 advantages resulting from his former habits, at once forsake them?
 He is the son of a man whose merit has elevated him to the highest
 office within the gift of a free people; he is connected to a man who
 has for years adorned the senate of your state, and could Isaac be un-

observant of this? He was in good circumstances, a first rate tradesman, beloved by his neighbors, what did he need to make him happy, to consummate his bliss? Only to be a father, which in a short time he expected to be. Was his family in a situation to require him to commit this deed? Had his heart been obdurate and depraved, a reflection upon the charms of an accomplished, a lovely wife, the prospect of speedily becoming a father would have melted it to virtue; looking in imagination either to his father, or his father-in-law, he saw them frowning at such enormity. What motive then could he need? Did not the witnesses tell you that Baker was the last man on earth that they would suppose to have money? Would you suppose that without a motive he would perpetrate a deed at which our nature revolts? You are asked to move on circumstantial ground; are my principles fallacious? Does the sun nap it of a morning? Do you believe that God regulates brute matter, and neglects man? A sparrow does not fall to the ground without the notice of the divine Being and is he negligent of the laws which regulate virtue? Does the moon impinge itself against any of the orbs in heaven, and are the laws which regulate the planetary system fixed, and are the laws of virtue less certain? It is settled that two equal forces opposed to each other will produce rest;—it is as impossible to remove a mind enthroned on virtue, as it is to remove an orb. I ask you then to require evidence sufficient to dethrone reason and virtue, before you believe that this deed was perpetrated by Isaac Desha.

The books say, (and the law is not arbitrary, it is not reason because it is law, but law because it is reason,) that character should have great weight. This subject has been travelled through by able counsel,—I feel conscious that I can present no new view of it to your minds, which must be already wearied, and I would refrain from offering any remarks were it not for my duty. Here let me correct the statement of the gentleman who told you that the first talents in the state had been employed in this case; he is mistaken.—I am a father, and have had three sons, I saw the prisoner's father at Frankfort, discharging the functions of his office; I felt for him, & after a long absence from my family, I am volunteer on the part of the prisoner;—I tell you upon my honor that I am not employed, I have never stipulated for a cent in compensation for my services here.—In another case where a poor young man was indicted for murder in the lower part of this state; his mother in the Eastward, wrote to me to defend him, I did so, and never received nor asked a cent.

I have feelings, and whether those which exercise other gentlemen are similar, I know not; but party spirit in politics, as in religion may be carried too far; and there is such a thing too as false patriotism. Regard neither of us only from reason. All that I ask is, that you will disregard this fungus which has produced so much excitement. I would ask what in morals is the difference between murdering a man on the public highway for money, and attacking a man's life in court

for the same purpose? To be sure there is this difference. In the one case there is some danger of being apprehended, and a hazzard of losing your life by the hands of the individual assaulted. But here there is no such risk; Desha stands mute in this curious assembly, and has his life assailed from patriotism! The constitution has guaranteed a fair and impartial trial, but does it provide for volunteer counsel when that counsel must throw his weight of character and influence likewise upon the prisoner? Do you not consider it weight? When I was not worth one thousand cents I was offered one thousand dollars (which would have made me rich) to appear against the life of an individual, but I would not;—this remark I feel it necessary to make. Here are *two* additional counsel brought forward; the Attorney for the Commonwealth has managed this prosecution with great ability and decorum, except the expression of an opinion which he should not have done, and where was the necessity of this extraneous assistance? The gentlemen employed to assist will pardon me. I must discharge my duty, or meet the compunction of conscience which I could not survive. I am old in practice, and have but rarely witnessed a similar occurrence although I have seen it before; it is a dangerous precedent and never should be tolerated—society should sit its face against it.

I will not say what their object is, but am at liberty to conjecture; in the event that a verdict of guilty should be rendered, do we not know it would be a source of gratification to some? Are we not sure that they have a kind of forensic pride which makes them hope for triumph? Why has our state been so traduced as to induce the friends of the deceased to employ other counsel so that injustice should not be done? One said that he was hired by the friends for that purpose. Are we not sound? Mark this—that whenever in your Court yard you see a man making a great parade and noise about his courage that man is a coward; when you see an extraordinary display of patriotism there is a correspondent deficit; so in religion; do not place implicit confidence in the man that is righteous over much, praying at the corners of your streets &c. the Christian passes on silently, walking in all the commandments of the Lord blameless and carries no trumpet about with him; it is the case through life. The state then is sound at Core, if not elsewhere—parade is unnecessary as paint is to the cheek of the fair damsel, she has no freckles to be concealed; the beautiful face requires no paint.

Then I wish you to go into this examination with me disregarding every thing but the evidence; I will state at the threshold that Desha is a man of high standing, independent; that he has every thing to excite him to a good course of conduct, to secure him in the possession of virtue, in which placed, he must have had a motive to depart from it before he would have done it; that his mind didn't lead that way; every thing is against it, and before you can convict, you must shew a motive. Isaac Desha must have acted from motive. In this

melancholy affair he could have had none. Weigh the evidence opposed to the force of moral habits and a good character and if it possesses strength enough to remove them there may be some ground to go upon. But first, one rule in examining the circumstances; as life is *certain* so must the people be; the act of committing the murder must be made as clear and certain as that the prisoner exists—the circumstances proving guilt must be thus certain; for when you depart from this standard where are you? at sea without a compass to direct you;—this rule must not be departed from. The distinction taken from the books between positive and presumptive evidence, could not require less than certainty;—the circumstances in effect must be as clear as positive proof—Should two men come forward and swear positively you must believe them. Does any one believe that there is not a perfectly consistent chain of circumstances in the sale of Joseph into Egypt, and the departure of the children of Israel thence? Did the circumstance of Moses being saved, never strike you with astonishment? When I was a boy it struck me as miraculous that Pharaoh's daughter should have arrived just in time to save the child; but one circumstance leads on another, it was a chain of causation;—It must be the necessary and inevitable effect of a connected chain that will enable you to act safely. One further remark before we proceed to the testimony, and I regret to have cause to make it.—Had the prosecuting attorney have opened this cause, there is no doubt but that he would have referred you to the proper authority.—But Swift has only been produced, a work which *smells of molasses*;— it is a yankee catch penny production. Why not have produced Coke, and Hawkins and Philips? These authors say that you may convict on such circumstances as where, a man is seen running out of a house with a drawn sword in his hand, another lying in the house dead, and *there being no other person who could have done the deed*. Swift makes you take life by guess; he says you must weigh the evidence, McNally says that you must not. According to a rule of reason, which is a rule of law, when you come to a rational doubt you must acquit. What, would you plunge a dagger in the bosom of a prisoner upon uncertainty? This book is at war with the standard authorities; the Attorney for the Commonwealth would not have produced it.

Take the criterion laid down and follow me through this devious way; we first get acquainted with Baker in evidence (& you are only to know him so) at Moore's; he said that he had been three or four days coming from Lexington, and stopped first at Russells, but soon went over to Moore's; was given to intoxication. Moore is only relied upon as proving the identity of the mare; he keeps tavern on a public road; set out early in the morning, and although I would not impute any bad motive to Moore, yet how is it possible that he should have paid particular attention to the mare. In an act of recollection you do not bring past things to you; no, you throw yourself back to

the time and place, when and where the occurrence happened; the memory is not impressed only by rare and unusual occurrences; it is with difficulty that you can recollect the weather, or particular dates.

What is time but the result of place and motion? It is a void between them, and in itself is nothing; a spinster will tell you the time of the day by the number of cuts he has finished; where there is no clock the country people will tell you from the work they have done;—an Indian will tell from the number of moons, &c.—it is almost impossible to recollect time or the weather. How much of time can you recollect? The oldest man in this house, by taxing his memory cannot have conscious identity of more than one year. When we enter upon life every thing is new, and hence the dearthness of its recollection; the aged take refuge back to those delightful scenes, when the blood gallops through the veins. But in the busy bustle of a tavern, where there are dozens passing every day, could Moore distinguish one common act? Then the proof of this mare's identity is of this kind; he must say she is the same mare, you must be satisfied of her identity and that Desha could not possess himself of her without murdering Baker, before you can convict him. What was Moore's opportunity of knowing Baker or the mare? and if he would not swear that she is the same, will you by your oaths furnish the supplement? Does Moore swear to her identity? No, and if he did, you would say there were too many passing, too many grey mares, and no particular mark on this to distinguish it from another, his was but a casual sight of her when under the saddle and is this an identity to take away Desha's existence? I do not wish to impeach Moore, but he had no opportunity, and if this is not the same mare what would be your feelings should the prisoner be executed by means of your verdict? Is this case less important than a civil case, in a contest for hogs or any thing of that kind, where this evidence would not justify finding it as the mare of Baker? There was nothing to impress the circumstance upon his mind, no peculiar marks, then how was he able to recollect her? When the body was first found Moore could not recollect that the man himself had staid with him; but it was ascertained that a man had been murdered who had rode an iron grey mare; Moore's mind made another effort, and the man and mare rose full in his recollection. I beg not to be understood as imputing any improper motive to him, but such is our nature. He should have been able to throw himself back to the time but could not; were you raised as I was, believing in the existence of ghosts? Have you not when boys passed some antiquated church said to be haunted, and have not your fears of unearthly apparitions often produced the realities to you? Who has not experienced this illusion? Moore gives no description to enable you nor any other to know her, it was by a retroactive effort, and whether it was the ghost or the reality, you cannot determine. Impressions on the mind are made as upon a sheet of white paper; he had none when first

asked, then how came he by them? Is it not probable that this man and beast made their appearance to him as the ghost does to the imagination of a superstitious person.

The next witness in relation to the identity of the mare is Davis—here a more important part is to be performed—He is a stranger and should be treated kindly and with great tenderness, but I am constrained to shew you that he is not entitled to credit. Testimony you will recollect does not consist in mere swearing;—you must enter into the manner, in which it is detailed—there is something in truth which will produce a recognition of its virginity; but it too like dollars is sometimes counterfeit. A counterfeit dollar by use is soon known, in like manner is falsehood, it will not stand the test. Davis comes we know not whence. That he should put up at a tavern, and love his dram too well, as is proven, must make against him, particularly against his good character. What his character is no one knows, nor whether he has property; it is clear that he does not regard truth. Doggate says that Desha never staid at his house all night before, Davis said that he had frequently, and if a witness swears falsely as to one fact, you must discredit him as the remainder of his statement. Will you believe him then as to the identity of the mare a circumstance so important? Upon the supposition that he should be credited, he does not tell you matters of fact which are probable. Baker had rode five miles, Davis was in the waggon yard when he came, Baker asked him the time of day; well what would draw the attention of Davis to the mare. He says it was because she would match one of his father's which was fifteen or sixteen hands high, and this but thirteen or fourteen. This is all he gives you, and it concludes the testimony as to the identity of the mare. Is this as to Desha's staying all night at Doggate's his only contradiction? No; he stated that he was not in the house while Baker was there—Miss Doggate swears he was. Some complaints were made on the other side relative to the course adopted in excluding all the witnesses except the one under examination but the the course is proper, and the only one of obtaining the truth in circumstantial evidence. I would advise all my junior brethren of the bar, to adhere strictly to it. The nag was very pretty he says, and very remarkable for color &c, and under all this examination he did not discover whether it was a mare or a horse? This with Moore's evidence is all in relation to the mare, and mark me, if you are unable to swear that this is the mare, we need not go any further; it is the key to the arch stone, the pivot upon which all the other facts turn. That she is the same, may be probable, but we are not in that region; we are in the inner temple. Would you find her Baker's if it was simply a trial of the right of property; No. You have had admonitory cases read you, which should make you extremely cautious; you have had Gedelies case, where Crow was hung, read; also the case of Parker and Hogue who so nearly resembled each other that they

could not be distinguished, and will you believe then that this is the same mare, when there were no marks by which to distinguish her? There were marks on that man which even his wife did not know.— You recollect the contest recorded in the scripture for an infant, between two females, each of whom claimed it as her own; I presume that you also recollect a case which happened in this country about twenty years ago, a certain Mrs. Inlow had lost a child about seven years of age, great search and enquiry was made for it, but to no purpose.—Some little time after, a parcel of Indians descended the river with a little child about the same age—Mrs. Inlow saw it at Ballett's lick, and believed it was hers—the squaw insisted that she was the mother, she had married a Frenchman, and her husband then a chieftain, and several others came in, and I engaged in the trial upon certain conditions; the tribe sent a deputation to Jefferson, and to the Governor upon the subject. At the trial a number of Inlow's friends came armed, but as good fortune would have it, the jury hung—no compromise could be made. It was carried to the General Court, but whose it was never was discovered; the child of Mrs. Inlow had a scar on its foot, so had this; and if in that case no mortal could tell whose it was, how can you upon your oaths say that this is Baker's mare? And if you doubt we will stop. If Moore will not swear that it is the same, you surely cannot; and if Davis does, and swears falsely as to other facts, you certainly cannot believe him. If this is not the same, this prosecution is at an end. We will now proceed as if the mare was actually the same. The counsel for the prosecution have told you that if the prisoner is in possession of property for which he cannot account, it is presumptive evidence against him; we have produced you authorities shewing that such is not the case. The case of the uncle and his niece you have not forgotten, she had property coming to her which was a motive—the uncle procured another and taught her to say that she was the same—the nurse disapproved it, and he was hung. If this is the same mare it does not follow that Desha killed Baker, and that he did not, I will shew you. This little mare is valued at twenty five or thirty dollars and will you make her an inducement for the prisoner to commit murder? On the supposition that it is the same, there is no proof to satisfy you as jurors, or I as a man, of the fact. May not he have come honestly by her? Honesty is credulous, unsuspecting—dishonesty is the reverse. Is it extraordinary that a man should buy a little nag on the road without witnesses? then if such a thing is common, you will suppose that he came by her in that way. Where are all those who breakfasted at Doggate's that morning? Who are, and where were those waggoners? where was Davis? It will be important before we close to find where some others were. They all assist in drinking Baker's whiskey, and will you suppose that Isaac Desha killed him for a little grey nag, and exonerate those whose lives qualified them for such a thing? If so, why? Is it because his father has reared

him in industrious, moral habits, and because his character is without a spot? I have shewn you the laws which govern the moral and the natural world are equally fixed and immutable. Davis was there, might he not have communicated it to others? Where is Sullivan that he is not here? They ask why Desha's coat is not produced, there was no need of it; he stands environed by the best of characters. Would it be unnatural, would it be unreasonable that he should not be able to account for the mare? If so, then you say that his good character goes for nought. He says that he turned off the road, there is no proof to contradict him. He neither denies the bridle nor its loss. Would he have given an order for the mare if he had murdered her rider? Would she not have been killed or sent off where she never more would be heard of? And yet you are to believe that he killed Baker and took his mare! From the time that fig leaves were sewed together in the garden of Eden, guilt has attempted to conceal itself. Is it unreasonable to suppose that Desha stopped at the stacks? But to prevent that, Miss Sullivan is introduced. She would have it on Tuesday, and the good girl no doubt had seen him ride by that day. Him only, she noticed that day; it is strange that she did not notice the stranger. She will say it was the second. It was intimated on the other side that I embarrassed her. I never did attempt to wound the feelings of a witness, nor to make one perjure himself—I begged her to reflect, she did but could find no criterion to ascertain the day, only from neighborhood report—she said in answer that she never had told any person but her grandmother—it was her frailty no doubt. Isaac's statement is, that he turned off toward Dennison's and afterwards came into the road, and is it improbable that he might have bought her of some one who committed the murder? Would the murderer not have been disposed to get shut of her? Would Desha, had he been the man, have shewn her to old Ball, and got him to examine her? I have shewn you that a man ought not to be condemned because he is unable to account for property in his possession; but Desha does account for how he came by this mare? Is it true that guilt attempts to hide itself, and that man dislikes, flies from punishment? If so, surely his claiming her before the young Ball's, and shewing her to old Ball is not an evidence of his guilt. Had Desha killed Baker would he not have charged it on Ball, and left the mare with him.

This is alledged to be the pocket book which Desha had when the Ball's met him. He carries it so as to be seen—loses it and asks them to return with him and hunt for it. Is it probable that if guilty he would do this? Associate with this his appearance, not agitated, no trepidation, no confusion, and do you suppose that a man of his character could perpetrate such a deed, and evince no alarm?—Would he have carried Baker's saddlebags on his arm? It always happens that any art to fix guilt will be detected. Wretched indeed would be the state of society, if such was not the case. In this case

these
emies
height
deed
vice
ed w
not b
stamp
I beg
betw
who
be ag
could
the s
same
Then
road
truth
to su
men
road
could
woul
I
Bak
seen
the
dear
the
brou
Wh
thou
ted
glo
and
and
mis
any
Th
to
occ
glo
ble
in
ing
Pe
ins

these circumstances, are all evidences of Desha's innocence—his enemies have overacted their parts. But would a man who from the height of character to which he was elevated had descended to this deed have given no signs of guilt? Yes; nature will assert her empire—vice cannot mimic virtue—God forbid that it could be done—wretched would be the state of our country if it had not a coin which could not be counterfeited. Every nation has its coin with its peculiar stamp which cannot be counterfeited—just so is it in the moral world. I beg you to listen, to bear with me, whilst I draw a boundary line between vice and virtue, for by observing this only you can determine who could commit this crime, vice overacts its part—will not a mind be agonized when it first perpetrates a deed of this kind? If guilty could Desha have moved on calmly, unconcerned? Could he bring the saddlebags and pocket book, be seen with them and be still the same? I think not—gentlemen we ought not to outrage nature. Then Desha says that he turned off and afterwards came into the road and then bought the mare; does not his conduct evince the truth of his statement? It is much more natural to believe him than to suppose that he would commit the murder. But ah! say gentlemen, why did he not go on to find the bridle? He had come on the road after his horse; and did not discover it; nor did he know he could by returning; it was in the neighborhood, and he knew it would be found by some one from whom he would get it again.

I have argued this case thus far upon the supposition that it was Baker's mare, and have recapitulated the testimony as to his being seen in possession of the things; we will now take another aspect of the case, and consider some other circumstances—There is the dead body, gloves clothes, &c and yet unfortunately for us, the little boy who found the glove is not here altho' young Pepper is brought—his speaks loudly. It is strange that he is not here. When the glove was found by him and carried home the family thought it had been dropped by some hog killers. Romeo associated his mistress' hand with the glove, but never before did I hear of a glove and a hog's foot being associated together?—Look at that glove and see if you would suppose that it had been worn by hog killers and left there by them—is that a hog stealing glove? Would you mistake those spots for the blood of a hog? I would not fix guilt on any one, but wish merely to show that others might be suspected. The glove was taken to Ball's and the family thought that it belonged to some hog killers; these young Balls coming along that road, it occurred to them that they had heard their brother mention that the glove was found there, and turning out to look for dead hogs, stumbled upon Baker!! The circumstance of the glove's being kept up in the family, their turning out where they did and accidentally finding the body raises ground for a conjecture which I shall not draw. Pepper is brought here, Mason Ball is not, Ball's family knew seemingly but little of each other. Elizman Ball can fix upon no other

day than that to which he can swear. On the part of the prosecution it is supposed that on Wednesday morning Desha went there to hide the evidences of his guilt, if that had been his object, would he have chosen daylight for it? And would not the fragments of the whip, the hat &c. have been concealed had that been his object? Was it not entirely natural to ask where Elizman Ball was on Tuesday night? Who rode the horses to hide the clothes? Who wore the plated shoes to hide the breeches? It is enough for me, that it was not Isaac B. Desha. Another question—why was not Hubbard here who found the hat? why was not Mason Ball here? They have the man who found the clothes, &c. and we luckily get from old Ball the circumstances of the plated heel leading to the breeches. Will you pass over all this, and in their defiance fix guilt upon the prisoner? The man who wore the plated heel certainly knew of the murder; associate the track and the pantaloons being turned out, and if Desha had been the murderer, instead of this, would not they have been hid? But if another who wished to fix guilt upon the prisoner, would he not have scattered the clothes as they were? Is it usual for the perpetrator to furnish evidences of his guilt, and would Desha have so disposed them as to lead up to his reverend father's bars? The saddle thrown on a limb—the clothes hid with paper for a sign—the pocket book left out to draw the attention, would Desha have done this? No Gentlemen. A little further: if the mare did come up, why did Ball start back so soon with her? And how did he find the way a mile and a half off when there were several roads leading off from the one he went? The natural way would have been to look for tracks, but he says that the mare looked that way; it could not have been that she looked for another. How lucky he was to take the road on which the murder was committed—was there reason to believe that any one was hurt? why not wait a little? why meet Desha's horse immediately? Another thing—Pepper happened there—he went some forty or fifty yards, and had occasion to leave the road a while on a call of nature, and when he returned saw Elizman Ball leading up Desha's horse; the mare had not come up when Pepper started—She came, Milton rode a mile and a quarter, and rode part of the way back, making two miles and a quarter in the time that Pepper was off the road, and before Elizman Ball had rode a quarter of a mile! Reconcile this—it should not be a difficulty to strike through the life of the prisoner.

Milton Ball says that he saw the saddlebags, that they were about half worn, he did not notice them from seeing, but from feeling. Would it not have struck him at once, to see Desha with saddlebags in his own neighborhood filled, as if he was going a journey? Beside, he having on a roundabout, and they distended, would they not have disclosed themselves? And yet he can recollect only from having felt them. Could there have been any thing remarkable in this

touch? Neither Elizman nor Old Ball saw them, how do you account for this?—Desha either had or had not saddlebags; when Ball met him, he would have exerted himself to conceal them but did not; all this might be expected from those who first discovered the glove and the dead body. They can tell you every thing to fix it on Isaac; there can be no doubt about the glove, its identity is proved. Gentlemen the prisoner has discovered no embarrassment to any one. Reflect, did you notice the manner of some of those witnesses; particularly Elizman Ball? There was nothing in the examination to excite his spasmodic, cadaverous yawns which so frequently occurred;—if the body had been produced they could not have been worse. I will not pretend to fasten guilt upon him, but when they attempt to fasten guilt upon Desha we must shew where suspicion might also rest. There are some doubts as to the mare, there can be none as to the glove—they found the body—they were in haste to catch the mare, and could follow up the road to a certainty and yet they are the very persons who prove all this. Why is not Mason Ball here a legal witness fourteen years old? From this boy we might have obtained some valuable information; he might have told us the relative situation between the glove and body—The circumstance of the glove's being associated with dead hogs, and it being kept up, as a foundation for conjecture is a volume. I beg to be understood as not hazarding a conjecture that they are the offenders, but from every circumstance it is more natural that they are, than that Desha is. Elizman cannot account where he was the evening before, taking all together I think they will justify an inference, although not sufficient to enable a jury to find a verdict against them. They ask how Desha came by the mare. I would ask how they came by the glove, here is its mate on the deceased stranger?—and too associating hogs with the glove. By accident they came along this road, which seldom if ever they travelled before, for they do not know when, and when there they recollected the glove and turning out found the body! I state the testimony; you never will reconcile contradictions against the prisoner.

I have stated that Pepper was at the house when the mare was caught and made Milton Ball to ride two miles and a quarter, while Elizman rode one quarter. I beg leave not to be understood when I speak of their being ground for conjecture, that it is against the Balls, for I would not make an imputation against them; but I contend that an inference might be drawn against them equally with Desha—we do not know their character from the evidence, but we are acquainted with Desha's.

We will now proceed to other evidence—It was conjectured that Isaac Desha was on his horse and struck Baker while on his. Was it natural that when the horse was scared in that direction, that it would turn that way? This mare had been well kept in a livery stable at Lexington, and would she have pursued a course in a direction

unknown, and from which she had been scared, when she knew the country behind? I cannot from any reason suppose that the murder was committed there; if it had been, would no discovery have been made before there was? Was there no blood, no impression, no marks of a scuffle? One blow would not have killed him, if so there was necessity for cutting his throat, then would there not have been a great quantity of blood? It is remarkable too that there was no blood on the body, nor any discovered on the ground; add to this that four men passed there directly after the murder was said to have been committed. The eye is not active, but passive; it does not go out in search of objects, there is a certain horizon beyond which it cannot go;—four horses passed, they have eyes of still larger vision: they discovered nothing. We see ten thousand objects which make no impression on us, but one so rare, if there, would have been seen beyond all question, either by those men or their horses. If then you take probabilities against the prisoner for God's sake take those in his favor. You are not to be influenced by revengeful feelings—Has your horse never been startled by a dead snake or a dead hog? but would he not more particularly be alarmed at the sight of a dead man? I have rode a great deal and can speak on that subject from experience; and especially as these men who passed there were hunters how comes it that nothing of this kind obtruded itself on their attention when McCarty too the next morning found the bridle? Would he not then have looked around for something else?

Gentlemen, (said Mr Rowan) the character of God may be as truly read in the works of nature as in the scripture; they are equally invariable and point out their Divine author. A circumstance to which I would here direct your attention is that when the body was found there were no symptoms of putrescence, stiffness was likewise kept off. When in your lives did you see an animal which had been dead twenty four hours that it did not become stiff? The very respectable young gentleman, Doct Frazier, who from all that I can learn is an amiable, worthy man, and justly esteemed, and just too from college, has told you that a body may or may not putrify in a certain time. I have read something of medicine, because I view'd it inseparably connected with my own profession. The saccharine substance sustains our nature and is promoted by animal heat; by this process the stomach gets clear of the food; saccharine fermentation ends in putrescence—if any thing dies with a full stomach it very soon becomes swollen. The tendency of all animal nature is to decomposition, which is necessary to putrescence; and is it probable, is it possible that this man could remain there that long and not putrify. Upon the hypothesis that the weather was cold would the body not stiffen?—and if warm would it not become putrid? The law which governs putrescence is a law of nature and you might as well expect the sun to rise at noon as to suppose such a thing—Did you never notice the curious, the intricate construction of a corn stalk?

to prevent the purpose for which it was intended being frustrated? The honey locust too, look how its seed are guarded by prickles with which the body of the tree is clothed, so as to prevent their destruction by any kind of animal: well do you believe that nature is true to her purpose in the regulation of those matters and is careless in regard to the human frame? Great wisdom is displayed in its organization; how carefully the eye is protected from the obtrusion of insects or any thing which might injure it, by its lashes—and does she take no care in the approach of the system to putrescence? Then will you believe that the laws of nature have been changed or suspended, in order to get at the life of Isaac B. Desha? You have seen this process on some of your friends; the strong the endearing ties of friendship cannot retard putrescence for an hour—I say it is a law of nature which cannot err—Leaves which in the summer decorate the tree, are blown down by the autumnal winds, and envelop its roots to keep off frost until the spring, when they put forth their pristine beauty; but here another of her laws which is fixed and certain must yield to suit the purposes of the enemies of this unfortunate man. Abraham said bury my dead out of my sight; but a greater evidence than this—Martha when the blessed Savior of mankind was about to call the beloved Lazarus from the tomb said Lord by this time he winketh for he has been dead four days; this is a fact recorded in the oracles of divine truth, & will you take theory against it? That Baker is dead is certain and of his having been killed there can be no doubt; but it is equally certain that he was not killed then nor there, or blood would have been upon the ground, and the body putrid. Another circumstance—the throat was cut and yet there was no blood on the shirt collar, nor was there any on the back of the head—Do you not think he was killed elsewhere and brought there, and that those things were scattered on the ground to be seen? He may have been taken away and afterwards killed, to suit existing circumstances; but unless nature deviates he was not killed then nor there;—How often have you seen bodies stiffen even in twenty four hours? You cannot make him guilty unless you stop putrescence—The olfactory powers of birds although so much more acute than ours, had not discovered this body for there were no marks of violence upon it. Nature is true to her purpose in all her works; a hound is gifted with a falling ear to keep out noise which it makes in the chase—He is a fool who says in his heart there is no God. Then take all these circumstances, the lead, the whp, the bridle hat & so none of them found, connect them with the scattering of the clothes, horses tracks, the plated heel, and reconcile them if you can. I mention all because I feel upon the occasion. We ought all to feel because character is the jewel of the soul. It is the salt which preserves it. It is the anti-septic to putrescence in the moral world. Have you not gone into your nursery and met your little child? With what reciprocal joy did you meet, believing in love reciprocated, innocence and purity?

Then with his former character, Hell could not present to Desha a more appalling spectacle than would the presence of his family; it is good character which forms the vast space between Hell and Heaven. I call Heaven to witness through its laws, whether that body could have remained there eight days in the month of November and have no smell. From the time that the world was in its cradle there is no such instance and no improvement can be made on infinite wisdom. I beg you to run back (said Mr. Rowan) to the evidence. They do not contend that he was killed at any other time than the second of November; and I consider these as celestial laws in vindication of a good character.

With respect to the beard—if it does not grow after death, what will be done with the body of Charles the Second on which when it was dug up, there was beard two inches long; which fact is tested and presented to the philosophic world—How many instances have you heard of persons being taken up when their beards were found to have grown. An acorn after it has fallen produces the oak—Cut down a buckeye in the spring when the leaves are just budding, and they will grow until the sap which is up is exhausted—just so in relation to the beard. Gen. Reed has satisfied you on this subject—if not why has not Mr. Marshall summoned witnesses to disprove his statements. *One General Reed* said Mr. Marshall—there is something Gentlemen due to age and character—I can say from what I have heard that Reed defies obloquy; that an insinuation of that kind would not only fall harmless at his feet but would recoil upon the head of him that made it. He is a man of experience, a man of sense; did you discover in his statement the disingenuity of falsehood? I do think from my experience I can tell when falsehood is detailed. I have examined the aged and the young of either sex. Witnesses frequently in giving in their testimony are noticed hawking and spitting which shews an agony; but did not Reed come forward in the character of a truth telling man and tell you that Baker's beard did grow? What was the tide of feeling when the multitude in the days of our Savior cried "away with him, away with him"?—It was something like the rage in a neighboring county on this subject. Gen. Reed reposing in the consciousness of his integrity tells the truth in spite of popular prejudice. He is old his grey hairs are venerable—He has fought the battles of your country. He has bravely defended in the field, the liberties which you enjoy—and little did it become that young man whose chin has not long been invested with beard to intimate that he was guilty of perjury—Where was that young man when Reed exposed himself to the toils, the privations the danger of a long campaign? I have trespassed (said Mr. Rowan) on your patience, and have urged the evidence. I have not gone on to draw inferences—that is your duty—there is a certain bound—thus far thou shalt go and no farther—if Desha may be innocent there you must stop. Suppose eight or ten men were to come in

and swear some other man killed Baker, would you believe them? If so, you must acquit Desha.—Unless the facts in all circumstantial cases are proved beyond a rational doubt you must acquit—(case of a man lying dead in a house, and another running out with sword &c. again cited) When or where Baker was killed, or where kept, I cannot tell, but it is certain that he had not been dead twenty-four hours when found.

I feel conscious that I have trespassed, but I have dwelt because that circumstance has cut a mighty figure; witnesses are fallible, but the laws of nature are not. If you doubt upon the subject of this being Baker's mare, we will stop. You may think it is probable, but no jury on the evidence, can find her so, beyond a rational doubt. There are certain cardinal rules laid down, which must be observed. It is an old doctrine, that the world once was chaos;—it was taught in the ancient schools, and an inquisitive student in the course of a few centuries said, *et unde chaos?* The Doctors were confounded; then may we not scrutinize every circumstance. It is a dear, a familiar right; then to pass over it would be doing great injustice. Two things are doubtless necessary; the existence of the fact, and its establishment.

Gentlemen, you should not stifle your charitable feelings on this occasion. "I was sick and in prison, and you visited me not." What was the consequence? Depart from me ye cursed; the thief suspended on the cross was forgiven, I do not ask for forgiveness because I do not think it necessary, but that you may examine the testimony in the exercise of that spirit; innocence must be presumed until the contrary is proved.

Another circumstance; a dirk is proven by Prather—if Desha had used this dirk would he have produced it? But you see his frankness. His whip is said to have been employed, it had no lash; that whip in the hands of Desha, would have been enough to effect his object—but if not, after resorting to his knife, would he make such a puncture through the clothes and skin with his dirk as this Doctor Drake in his fancy thought that it was made with something like this, but Fielder &c. think it was with a knife. I have every confidence in the integrity of Doct. Drake; I am sure that he would not consciously mistake any circumstance. Students come out full of theory, but it takes time to understand *matters of fact*. The idea of this dirk being used is forbid by its production—the ghost of Baker would have been associated with it—it outrages common sense to suppose that this dirk would be used after the throat had been cut. Can any man who has heard all the testimony believe otherwise than that the body was placed there nearly or quite in view of the road? Does any rational man believe that the head shall be struck three or four times with this whip so as to break it, and not fracture the skull? The bone at the temples is quite thin, about the thickness of brown paper. The person that cut Bakers throat had leisure for it; here is

artifice.—We were ready to satisfy you on the subject of the whip, but delicacy forbid. Collins an innocent honest man to be sure, could recognize this, shattered as it is to be Desha's; but it was illusion. Othello killed his wife upon circumstances starting with a pocket handkerchief; but when a sentiment is propagated by a county meeting, what effect will it not have? Shrubs yield to the gentle blast; but Reed does not, he stands unshaken.

Were not all those things artificially disposed of? That this was not Desha's whip, is proven by Ballengal, and yet Mr. Marshall must have it so, like the tyrant Procrustes with his iron bed—if the evidence is too long, lop it off if too short stretch it out. The shirts had some specks of blood upon them, & when Gentlemen cannot get an effusion from the body, they will from the finger, when occasion requires. This was not the first crime of the man who did it; the child crawls before it walks. It cannot be possible that Desha could step from innocence to crime so abruptly. Every evidence of guilt is laid in view, which shews at once that they were intended to be seen. Self preservation is the first law of nature, and would Desha not have gone back and hid all these things? They will have the blood on these shirts to come from his finger; would not the murderer have stained them too? These shirts were in the hands of some one who intended to use them, from the name being cut out; Desha did not need them. Job was a just man,—see the temptation through which he passed—there is an illustrious example of the strength of good character; character is not changed in an instant. Another circumstance—Bell and Whitaker said they discovered something unusual in Desha's appearance when he came home on the second November, but they never thought of it until after suspicion had lighted upon him; when a man gets a new idea, he delights in it as his own property—they run back and knew that if Desha did not look confused he ought to have looked so; but Sandridge perceived no change—that circumstance will not be entitled to much credit; if it was true he would have looked duller,—he would have fled. But there were no such signs—no he put his hand on the coffin—when he had examined the wounds he staid all night at Reed's, and after all this sent for the mare. These circumstances, only for the present situation, would be ridiculous—the law says that flight is an evidence of guilt. That Baker's little mare could have been a motive, for Moore says that Baker was among the last men he would suppose had money, can you think it? Who that has committed murder would not escape? It is just that you should view both sides and if a doubt exists—unless the laws of nature fail, he surely is innocent. There is doubt as to the mare, and even if there be none there is doubt of his getting her by murdering Baker; if he had, he might have put it on Ball. Ball had not lived sufficiently long for his character to require bristle—he had not the same incentives—during half the life of Isaac Desha his father had been the object of public confidence, and just before

this catastrophe he had been promoted to the chief magistracy of the state—these are preventives from vice, as well as incentives to virtue. It is not beyond all doubt then that he killed the man. This road on which Baker was found had been travelled by others, beside those you have spoken of; it leads to Clark's mill; but the Balls *happened* to come that way, although they usually go another. Do not understand me as attempting to fix guilt upon them; such is not my design.

I will now (said Mr Rowan,) recapitulate the evidence. There was no motive for Desha to do it—when they started from Doggate's, Davis was not at the house—what the neighbors were at God only knows. I will not conjecture in relation to the identity of the mare, there is no doubt, but that you must doubt—there is doubt of his acquiring her by means of murdering Baker—might not some other person have committed the murder, took the mare to Desha, and have changed his name? I beg, I conjure, and entreat you Gentlemen that you recollect that if you have a rational doubt, you must acquit; one thing in the examination of the evidence—if there is one circumstance that will break the chain against the prisoner you must acquit him. If you convict him, his fate is inevitable—The question before you is whether you will or will not take his life—It is certain that he lives, you ought to be just as certain that he ought not to die; if it be that certain, it is impossible that any other person could have perpetrated the deed; that question is settled by the supreme court of the United States. You need not be certain that he is innocent but you must be that he is guilty. If you acquit and he is even guilty, 'Vengeance is mine, I will repay saith the Lord.' Can you get over doubting whether he killed Baker? whether this is the whip?

Whether he hid those clothes? Do not the Doctors tell you that after putrescence commences, the corpse never stiffens? Baker when found was limber, but when shifted from one to the other coffin he stiffened. The blood discharged from the wounds was not putrid, but fresh; if then he was not killed on the second, every thing falls, for Desha got the mare then. Is this any thing like the case read from the book, where there was one man dead in the house another with a drawn sword, and *no other person who could have done it?* His finger was cut, and it is supposed that it bloodied the pocket book; if he had taken it from Baker, would he have shown it? Would he have taken the Balls back with him to look for it? In purchasing the mare would he not have used it? No one of you could tell that I have a pocket book, although I have this, (which I wish was filled with bank notes,) and other papers beside. So far from this being an evidence of Desha's guilt, it is an evidence of his innocence.

You do not know precisely the situation of a man placed as I am; if I could commit a prisoner for whom I appeared to a jury without doing him the justice which I ought, no mortal could imagine what

would be my feelings. Man, Gentlemen, is not like an island in the ocean; he is a social being, his family is an epitome of the world; on an occasion like this, every sentiment which connects itself with home, is at stake. Desha was a husband, he is a father, he has a father and mother, and you cannot reach his life without wounding the soul of both; and oh! if his wife was here she would say that the venerable Logan knew him as a faithful apprentice, as an accommodating amiable youth, but not as I have, in the hallowed, the sacred relation of a husband, and the father of my child;—that the world could notice his virtues, but never could see him as the affectionate, the dutiful, the beloved partner of her bosom.

Will you guess then that he is bad? Will you degrade his father? Shall his enemies be gratified by the prostration of his son, and by circumstances against him not conclusive? Had the Attorney for the commonwealth, much less the auxiliary counsel, have seen the hearings of the mother's bosom as I have of the father's perhaps their course in this prosecution would have been softened. The father in this case is also the executive. David cried, "O my son Absalom; my son, my son Absalom, would to God I had died for thee, O Absalom, my son, my son." The prisoner's father has suffered (if you will allow me the expression) like an Arch Angel—he has sat here in all the silent majesty of grief. Is his son, of such good character, to be sacrificed upon the supposition that this is Baker's mare?

I have not attempted to address your feelings; no orator, no poet can portray the realities. I called your attention to reason with me, I have attempted to reason, and I know that I address a jury who can supply all my deficiency; a jury that will reason impartially, the result of whose reasoning will restore the husband to his wife the father to his child. His father has not bowed to the misfortune which has befallen him; he has executed the functions of his office. God forbid that it should ever be the case. but you have sons that may be involved;—Six months ago had it been intimated to him that this would be the fate of his son, he would have been offended. Pursue that divine maxim of doing unto others as you would have them do unto you; remember that you cannot give life—that all the combined powers of the world cannot produce such another being as Isaac B. Desha.

SATURDAY MORNING, JAN. 29TH, 1825.

Court met pursuant to adjournment.

JOHN CHAMBERS Esq.—Addressed the Jury on the part of the Commonwealth in substance as follows:

It was under circumstances (he said) of peculiar embarrassment, greater than he had ever before experienced, that he arose to address them; and were it not for the exemplary patience which they had bestowed throughout the cause, the disposition to give every branch and feature of the subject an impartial hearing, he should despair; but felt satisfied, that he should receive that attention which he deserved. My situation in any point of view, is a peculiar one; and rendered more so by the course which has been pursued in the opposition; you must be satisfied that whatever feelings may exercise me on this occasion, my situation would not be enviable even for a Jesuit.

You are all apprized, and every individual in the community is acquainted with the circumstances of the case—You are apprized that this crime was committed in a different county, and where I prosecute—the Legislature threw it here upon the shoulders of Majr. Wall—the duty involved upon him by mere accident—I have never been heard to complain of its removal or the causes which effected it I thought justice sanctioned the measure. When it was removed I hoped to be exonerated—he insisted that I should appear with him in the prosecution—the application I rejected. He again informed me that he felt himself oppressed by the weight of counsel which was opposed to him, and likewise felt unable to discharge his duty to the Commonwealth—I again refused; but upon another application, I thought that had it been taken from him, and thrown upon me, it would have been but right for him to afford me his assistance and under this conviction I promised to appear. But whatever may be thought of me in future, though I should be consigned to the fate of the Jefferies, the reflection that I was actuated by no other motive in lending my feeble effort, than to see the ends of justice accomplished, will always console me.

Maj. Barry enquires for the place which I will fill in the page of future history; Gentlemen I am too humble an individual to hope for my name to be handed down to posterity; and were I even so vain as to cherish such a hope, I should never envy that gentleman the rank which he will occupy on that page. I have never been clamorous in calling upon my fellow citizens to promote me, nor have I been found shifting from one to another high office in our state; indeed I have too much pride to envy that gentleman, the station which he now occupies. It is with extreme reluctance that I dwell upon

the course which has been taken on the other side; but it is a duty which I owe to myself, and to justice. It may be cowardly to seek vengeance on a fallen foe, but I would ask whether it is more valorous, to assail from behind the ramparts of power, an humble individual in the conscientious discharge of his duties? It has been insisted that I am induced to appear from the excitement which prevails in a neighboring county—Maj. Barry said that I was invited, and accepted the invitation—I never considered Maj. Wall a man of compliments—and I consider the solicitation of my aid, inconsiderate as it is, but the effect of generous feeling. Whether I am under the influence of party spirit or not, is neither with you nor Maj. Barry to enquire. I have never sought for public favor but I have a regard for public feeling.—It is the lever which gives motion to the government. But no such motive actuates me. I have a pride as a man, and as a citizen, and a confidence that the weight of counsel and his connexions to the contrary notwithstanding, the prisoner's case will be fully and fairly investigated.—Each one of you will feel a pride, that you could not be overawed; but do not understand me as meaning that they have attempted such a thing.

I am asked emphatically by Mr. Rowan, for the difference in morals, between murdering a man on the highway for his money, and attacking the life of an individual in Court, when money was to be received; it was unkind—it was applicable alike to his Honor upon the bench, and you gentlemen in your box, to Maj. Wall, and to myself; I know no other way to repel his ungenerous insinuation, than to ask him whether even that would be worse than to throw his *Ægean* shield around every prisoner, to rescue crime from its merited punishment? The talents and ability of that gentleman are proverbial, and particularly in cases of this kind are deemed the greatest in this or perhaps in the United States; and shall they who possess such stupendous talents, always interpose them, between crimes of the most crimson hue and punishment, and then lay to us the charge of robbery and murder? We do not compare with either of those gentlemen; we fill stations assigned the junior apprentices of the law.—I know that I stand at an humble, at an awful distance from their talents, but do not think that they should try to throw me in the back ground. I labour under the additional difficulty of ill health, increased by unusual confinement, which no doubt you have felt more severely if possible than myself.

If Gentlemen suppose, that I will attempt to enlist your feelings upon this occasion they will be egregiously mistaken; even if I could work upon your passions, I would disdain such an attempt in a case of this kind. I shall address myself to your reason; I would not for all the wealth of India, drop an opinion which would weigh an atom with you. I too am a father, I can feel for his father, not because he is in power but because he is a father. I do not appear before you for ought of ill will against the prisoner, for I will acknowledge

all his former amiability of character, his virtuous course, and every thing that is true upon the subject; but he is but mortal and may fall—and the state into which he has fallen you should consider. With the law and with the gentlemen I say, that if you have a rational doubt you must acquit, but do not give way to every thing else which they would suggest to you. Do not give way to feeling. I have been astonished, amazed, that they without any particular evidence of the fact should say that this is a party trial!! Do you feel it so? Where is the foundation for such a thing? You are sworn to try this case, according to the law and the evidence; have you heard any evidence to justify that charge? You have been led to the presses of the country to the Legislative Hall & Wickliffe's speech is made to cut a conspicuous figure. The distinguished counsel was there; why did he not give a mortal blow to it at once? I do not stand here to justify Wickliffe's speech. The excitement in a neighboring county is made a medium through which to make this charge. Gentlemen why this? Human nature revolts against the commission of crime; if the humblest citizen is charged with a crime of this character, is not all society awake to find out the offender? It seems that in the county of Fleming a poney purse has been raised as they will have it; what are the evidences? You have it from Marshall and is there any thing repugnant to the high and dignified standing of the state? Desha was brought here on Thursday; the Monday after was to have been his trial; the witnesses were spread over three counties, and it was believed that there would not be time to procure their attendance; from their number and situation the trial was postponed to a much later day. Desha having been confined in Flemingsburgh, its citizens thought that he would wish a speedy trial; a few of them employed an humble citizen, to wait on the Attorney for the Commonwealth, and carry the process where it might be required; and this is the effort making for sanguinary and bloody purposes! my God! Gentlemen, because the citizens of Fleming aim at the development of truth; because they wish that if the prisoner is innocent, all suspicion may be wiped from his reputation, and he be restored to the bosom of his family and friends, but if guilty that it should appear, and crime meet its desert, shall such a charge be publicly made against them? The gentlemen have not told us to what extent they have sinned, nor how far any one has transgressed. Gracious God! said Maj. Barry has party spirit brought us to this? Gracious God! has it come to this, that citizens friendly to justice, and who use their effort to accomplish its end, shall for that, be charged with having sanguinary and bloody purposes against the accused? He would not directly charge them with a motive of this kind, but I must condemn in turn the reproachful insinuation.

It is perhaps more to be dreaded, that in argument Gentlemen have attempted to make you believe that there are witnesses, and circumstances in favor of the prisoner, kept behind the curtain. Shall

such humble citizens, men in the humble walks of life, from the regions as Capt. Taul says, where many are prepared to deoy the unwary traveller from the way and commit deeds similar to the one with which Desha stands charged, shall they for their humility have such accusations made against them? With due deference to that gentleman's knowledge, I have lived for twenty years, within twenty miles of that section of country, and never before, heard such a thing laid to their charge. It is true that they do not live in the most fertile quarter, where the earth yields its fruits almost spontaneously; their's is a situation in the oak woods; the soil requires the severest tillage before it will afford the necessaries of life; they must follow their plow in the exercise of patience, but should this be the ground for such a charge? if so I should also be subject to a similar one; I have followed the plough and have been forced to eat my bread in the sweat of my face. I have felt the necessity of education, but more particularly now that I have to combat with such mighty forces.

Gentlemen of the Jury, it is worthy of little further remark, that there is a combination against the life of the prisoner; what could have been the object to sacrifice the life of one who before had been always so much beloved by all? with whom the witnesses were so intimate, and so friendly, that they saluted him by his given name, and some so far as to call him Uncle Isaac? Was there private or political enmity existing against him or his relations? Politics seem not to have concerned him; the witnesses had rallied around his father in the trying hour; and young Ball's must be trampled down. It is unjust that they should be weighed down with imputations of a crime at which God and Nature shudders. If such a course is pursued and indulged in, Gentlemen, it may bring your grey hairs in sorrow to the grave.

Recollect that I do not say that the prisoner is guilty, and if I should, regard it only as the idle wind; mind the evidence. There is another view in the general aspect of this case, to which I would call your attention for a moment. Your patience must be exhausted and I shall therefore attend only to the prominent features of the case. The talents, the fervid fancy of the gentlemen, as well as their superior reason, have been brought to bear in this case; your attention has been called to the high standing, the fair character of the prisoner; it is right that it should, but you are not to be influenced by the fictions of the novelist, or the imagination of the poet. As far as I know, Desha's character has been as fair as that of any man; but it is said that good character is never receded from, that a virtuous course is not deserted, &c. I shall not attempt to follow the gentlemen in all their wanderings through the works of nature, to gather arguments in support of their doctrine; but if that is true there never would be necessity for bringing any one, who has lived irreproachable, and irreproachable to the age of twenty three years to the bar of justice. Our nature is fallible; a man may descend from the high-

station either in civil or religious society, to the lowest state of degradation; there is no need of introducing history, to shew you that no one but he who spoke as never man spoke, lived without an error, or to prove my position. You need only look among ourselves—look at Aaron Burr who from the second seat to which the suffrage of an enlightened nation could elevate him, is reduced to the lowest rank in society; he drags out a solitary existence amidst the busy throngs of a populous city; moves about its streets but as the ghost of his departed spirit—This is an illustrious example that the highest citizen may descend even lower than this prisoner. A traitor is viewed as one of the vilest malefactors; he sacrifices not a single individual to effect his purpose, but perhaps thousands. Well, if such men as Aaron Burr could descend to this, and others from the most spotless characters, even at a more advanced age, to similar crimes, is it unnatural to look for it in a person of twenty three? But I do not wish to lead you astray, as Major Barry seemed disposed; he said that Desha could approach the coffin of Baker, and examine the wounds upon the *corpse*, when Macbeth shrunk from the blood of Banquo; when Hamlet feared to follow the ghost even of his father. Gentlemen, who are these ghosts that they should be introduced here?—They existed only in the poet's imagination—I am sure they never will avail me any thing. Permit me to say that there is every thing in the department of this prisoner which is almost supernatural; if he did commit the murder, that he should not be acquitted at any time, is something beyond my comprehension.

I do not pretend to know his organization; I do not say that his deportment is an evidence of guilt; but on either hand, guilty or innocent it is the most extraordinary character that I ever knew.—Who were they that first attached suspicion to the prisoner? Were they not his own beloved neighbors? He could have had no political enemies—he was generous, urbane and friendly, so that he could have no private enemies.—It was his friend General Reed, his son-in-law, and his son-in-law, such witnesses as Major Barry deposes to look upon. In your examination of this case it is important that you should enquire, with whom suspicion first originated—and whether you can find, that they combined against him. In the earliest stage of this matter, General Reed had the prisoner in custody, and took the necessary steps to bring it to an investigation; but the gentlemen he had an opportunity to escape and did not, trust to his innocence and high character. In speaking of the character of witnesses, great stress has been laid on that of General Reed; and the counsel have passed eulogies upon him which no one could have been astonished the General himself; yet the witnesses on the other side are equally credible with him. In his own neighborhood he would think it no disparagement that it should be said, that Ball was as much to be believed as he was. I do not mean to disparage him, but rather than to bring him to the proper standard in regard to the ob-

or witnesses. The rule in regard to the manner &c., of a witness, is a good one in general—it has its exceptions—it will not do when applied to boys and females. Poverty, timidity, ignorance, will be palliated when investigated by such powerful talents; take this into consideration, and no one of the witnesses for the Commonwealth in manner, will fall beneath General Reed, not even the humble Davis.

In the course which I have taken (said Mr. Chambers) before you, I have passed over extraneous matter; I have aimed to remove every improper feeling, if any—I have examined you all, and accord with the gentlemen in the remark that your attention has been unparalleled. I feel it my duty now, to attend to another attempt made by the gentlemen to alarm you in relation to the evidence. It has become the practice of this country and the gentlemen have given in to it, that no conviction should be had on circumstantial evidence; they have even read cases to shew you what positive proof is, and that it is often uncertain. My God! what mockery is it, to enquire into facts when you are lighted on the way only by poor frail men,—mortals whose reason may be perverted! Should a man swear that he knew your horse, and was corroborated by a chain of circumstances, yet he is not to be believed because he is a poor fallible man.

The gentlemen will have you believe that Chitty and Swift are ephemerals, were Jackma lanthorns and not to be believed. To what will man not descend when necessity forces him? Those are the favorite authors of the present day; their principles are founded on the march of mind to legal knowledge. One of them says Mr. Rowan is an American production! smells of molasses, written by a yankee! But I will shew you that they accord with those venerable sages, Coke, and Hawkins, which he has been pleased to mention—They must be thrown away because they are modern; they were read upon their side, but did not smell of yankee until read by us. Phillips' appendix, has been used to scare you; who was the collector of that appendix? Something near a yankee. He has rendered himself immortal by collecting a number of cases from every source to screen the blackest crime from punishment, when it can be established only by presumptive proof. The validity of some of those cases I will acknowledge; but some I will be able to shew you, are founded upon fiction or superstition; it is remarkable that the testimony of the validity of that appendix may be found in the preface. Judge Breckenridge has said that where there is a possibility of doubt you must acquit, and asks "would you hang a man on doubt? No." So say I; but it is not that kind of doubt, which he and the author of the appendix would make to weigh; for even where there is positive testimony there is the possibility of doubt.—Witnesses may be perjured—will you then never convict? If in the case of Hogue who was proved to be the same, who was clearly identified, and yet turned out to be another—if you give weight to such cases,

And acquit because human reason may err—if you are prepared to throw us into this state of things—if those principles are to be adopted, then I would rather that Desha would be the first instance. But your reason will not give in to matters of this kind—you are not ready to adopt and sanction any such principle. If in this case the evidence has erred, then acquit—but you are to form your verdict in the belief of your souls, according to the evidence.

The first case which they introduce is that of the uncle who was charged with the murder of his niece and ward—the child was missed—there was some motive—no murder was proved—but time being given the prisoner, at the next court he produced a different child, which proved another falsehood. That case introduced these principles that the murder must be proved to have been committed—that the accused should be cautious in introducing falsehood. What relation has that case to this? the principle upon which he was convicted was then done away. But the principle settled there, has no exception but that of throwing a person overboard of a ship, boat or something of the kind. Another case was read by Capt Taul from the work which they say smells of molasses, but may be found too in Hawkins and Coke—that is the case where an individual is seen running out of a house, with a drawn sword which is bloody, another lying dead in the house and there is no other person who could do it;—there say they you may convict. But the witness may have been mistaken—or the dead man may have ran the sword through himself, the other have drawn it and run off. That is an insulated circumstance,—but one—and it might have been framed; the witness may have been mistaken, he may have deposed through malice, Breckenridge, and the author of the appendix say, if there is a possibility of doubt; that case is distinguished from this—his is not an insulated circumstance—this is a chain, a combination of circumstances, detailed not through the malice, mistake, or perjury of a single witness.

My task is different to those of the other gentlemen, owing to the weakness of my memory I do not wish, nor am I able to follow them through all their ramblings, but will mention the prominent facts and apply the law. Another case has been cited which is calculated to alarm you at the first impression. The case of Jennings, who was inculpated, tried and executed, for robbing a traveller of twenty guineas, which were marked; how does that stand? the guineas were found in possession of the servant, and by the perjury of the master he was condemned—that case depended upon the acts of the master over whom the servant had no controul. The case before you is different—Jennings had no agency—Desha had. The case of Hogue also they have introduced; in both of those cases persons were introduced, who identified those accused; one who testified that he was her husband. Suppose in that case they had resorted to the scar on Hogue's foot and to other marks upon him. Suppose

in the case of Jennings; that he had been degraded from a high character and brought to the bar surrounded with the friends of his youth. These cases Gentlemen should not alarm you. They have offered also the case of Ridley, who was seen fighting on the ground with a pitchfork—they all go to shew that no other person could have done it; but there was another there. It is worthy of remark how the innocence of all those persons, was made appear. How in the last case would it have been found? Why the case itself shews that the juror whose refractory course was reprov'd, confessed the deed; but whether before the Judge, or on his dying bed, it does not state; this shews that it was founded on tradition. The gentlemen read another case, where a man was charged with having murdered his wife, and three months delay was granted for some providential interposition to prove his innocence. The judge in travelling in his Northern circuit on the day on which the accused was to have been hung, happened to hear some one remark "That this day such a person was to be hung for a crime which I committed." This is a pretty story; well what was the effect of it? The person condemned received a pardon. I should like to know its authority its derivation. Another case has been presented, where a man was executed for the murder of his daughter; she had been heard to exclaim that he was the cause of it—the case was calculated to excite the utmost rage of society, being of so unnatural a character; but sometime after his execution, a letter was found explanatory of the matter, and the body which had remained on the gibbet was taken down and given to the friends, this is founded on a newspaper report & is of extremely doubtful authority. I recollect a few years ago some man was supposed to have murdered another in Lexington—suspicion followed thick upon suspicion—and that the man suspected, on his dying bed confessed the deed; it was utterly false. Such cases find their way into newspapers, and are promulgated to the world, without the slightest foundation. Every man who commits a deed of this kind leaves friends behind; they have strong inducements to rescue his name from oblivion and obliquy and to effect it, resort to some device. View those cases in every way before you receive an impression from them, and then give them all the authority which they are entitled to.

In the further consideration of this subject, I shall call your attention to the legal character of presumptive evidence. They have given you authority from (Coke upon Sil. fol. 6) which I acknowledge to be of ancient and high authority—so much for that.

I will refer you to another authority not denounced as modern or ephemeral. Judge Breckenridge has laid it down that where there is a possibility of innocence you must acquit, but they have read another case which controverts that idea; give them all the benefit of that case—there is a possibility of doubt in all cases—infalibility belongs not to human nature. McNally says that in circumstantial cases there is always possibility of doubt, but that circumstantial ev-

idence may be received. In further support of my position, Chitty one of the denounced authors, but in general use, lays it down that in cases of murder, presumptive evidence may be introduced, and is even better that one positive witness, on account of perjury &c. So that unless authorities are to be received to suit the gentlemen's purpose, my principle is established.

One prominent feature of the evidence is, why he has not accounted for the possession of the property; the gentlemen have assumed the ground that they are not bound to account for it, but this is unwarrantable. I admit the principle, that, innocence must be presumed until the contrary appears; but suppose you lose a horse, and in a few days after, find him in the possession of some one, who says that he got him by purchase, but is unable to make it appear. What follows? There is no similar case that a conviction is not the consequence, because the person in possession should explain away such circumstances as involve him in suspicion. This doctrine it happens is not laid down in one of the proscribed authorities (McNally). In illustration of that principle I would ask why the uncle was allowed time to produce his niece, and why, when produced, evidence was received of the fact? If an individual is charged with crime he owes it to the laws of nature, and of God and to society and to himself, to explain away the suspicious circumstances against him.

I will now address myself (said Mr. Chambers) more particularly to the evidence. There are certain plain and obvious rules, to direct every man in quest of fact, from which neither genius nor erudition can draw the mind. Independent of all law there is a mean through which every mind can grope its way to matters of fact. I do not wish to dwell, nor to lay emphasis on any thing which presents itself; but to retrace the circumstances, and if you find him innocent, let public sentiment or opinion be what it may, you are bound to find him so. You were told by the gentlemen what would be the influence of your verdict on the public; if I knew that they were mistaken God forbid that I should contradict them; it is for them to say how they acquired their information. We must commence with Moore, as he is the first witness introduced; something has been said about the mare's having been kept in a livery stable at Lexington &c. but all this is foreign to the matter. On Moore's testimony in some good degree hangs the identity of the mare. He says that Baker was brought to his house on the evening of the first of November that he staid all night and set out early in the morning—when he was about to start, the subject of the value of his mare was mentioned, and he (Moore) examined her. He afterwards saw her at Reed's and at Flemingsburg. They seem to think that he was not positive—I thought otherwise—what may be your opinion of it, is not for me to conjecture. Another reason which they urge is, that he did not recollect when spoken to, of the circumstance—they account for it to my satisfaction—his attention was distracted—there was nothing

then which associated itself with the man; but there is a principle which acts upon the mind to recall objects to its recollection—you are asked whether you remember such a person—you at first say no; the question puts your mind upon the enquiry, and upon the question being again asked, (particularly when there is a circumstance to assist the memory) your recollection is distinct. Is not this your case every day? After a while Moore was told, that the man had been brought to his house from Russell's by the stage driver, and he recollected him—Seeing him in his coffin, he recognized him immediately, as well as his mare. A question is asked you with confidence, whether if this was a civil case you are prepared to say that it is Baker's mare. You are sworn to try this case according to the evidence; let me ask you, if even on such evidence as that of Davis you were asked whose property she was, when in possession of some one who would nor could not account for her, whether you would not say that she was Baker's? You are not to take one circumstance by itself, but to connect the whole. She is found in possession of Desha near the place where he was murdered, and no satisfactory account is given for her. Doggate says that Davis sometimes drinks—that is to be sure a misfortune into which many fall; but neither his intemperance, nor rags, and poverty, nor his itinerant vagrant state, imply corruption; if they did, many of us would be subject to the same charge. Such were the characters who first settled our country. But there was something in his appearance and manner which the gentlemen disliked; I do not know what it is unless it is his want of costly apparel, and a splendid education. His manner was like that of all the witnesses introduced, plain and simple—take a man from the private walks of life and place him in a crowded Court house, as this has been throughout this prosecution, to be examined by the first talents of the country, and he becomes a mere weathercock—ask him questions which he could elsewhere readily answer, and here he labors. Take a servant and interrogate him; he wishes in some degree to approximate in manner and in language the person he addresses. Take a person from the plow, and bring him before this assembly, and you will find his deportment greatly similar. Davis is said to be impeached by the testimony of Miss Doggate; she said that he was about the house after Baker came; that he was even in the same room, for he came to the kitchen for water, and too, that he brought out Desha's horse that morning—Now what was her opportunity for observing all this, when she was in the kitchen preparing breakfast for the guests? It has been intimated too, that she spoke according to the course of nature and the course of the family. Doggate corroborates the statement of Davis—he said that he did not recollect the animal's sex, and Davis's statement that he examined her because she matched one of his father's is ridiculed. Do you never find a match for one of your horses in marks and color and not in size? This is no good ground to charge him with perju-

ty. But because he did not see whether it was a mare or a horse,
 the gentlemen suppose that he took but a superficial view, too much
 so to be able to identify her. If he had been disposed to commit
 perjury would he have hesitated to say whether it was a mare or
 horse? Is that not the strongest evidence that he did not mean to
 perjure himself. In following the progress of the deceased, Dog-
 gate did not see him set out, but thought that they left there soon
 after breakfast. Miss Doggate saw them start together—but if she
 did not it is immaterial, for he confessed the fact; the testimony of
 Williams amounts to the same thing—But they must assail every
 witness, and why? Upon the fallibility of human reason. They
 are enabled to recollect certain facts by the association of others;
 Williams cannot recollect only from being at work, and taking mem-
 orandums of the time &c. When asked in mercantile technicality,
 about entries, he does not understand what you mean—he was ex-
 amined on the subject of the date. One general remark as we pass
 —you are enabled to remember a particular day of the last week by
 associating something which transpired the day before or after.
 The body was found, and inquiry was made throughout the neigh-
 borhood; here was an occurrence calculated to excite a recollection
 of circumstances—it was not more difficult then to run back seven
 or eight days, than it will be for you, years hence, to tell what you
 are at now; this is the natural course of things. But you are told
 that if you can give an account of one day, you may for any and
 every other before or after; two months after a trivial matter oc-
 curs, you are asked when it was; you are unable to particularize, be-
 cause you have nothing to start from. It is said that such questions
 were asked soon after the circumstances occurred, but the assertion
 is unwarranted—they were left for the ingenuity of the counsel
 engaged before you. At any rate, the way to impeach a witness is,
 by introducing other witnesses, and not by embarrassing and propoun-
 ding new and unexampled questions to the one under examination.
 Permit me to stop here and enquire a moment. Allen's is spoken of
 as being one quarter of a mile from Doggate's and at the end of the
 fence this road turns off, and goes in the direction to the middle
 trace. (Mr. Chambers here exhibited and explained the diagram of
 the respective situations &c.) There it was, (meaning a point be-
 yond Allens from Doggate's, he continued; in all human probability
 that they turned off the main road; Desha says that he turned off at
 the stacks; but what says Williams, and Miss Sullivan? She says
 that she saw the prisoner in company with some person, pass Allen's
 on the morning of the 2^d of November after breakfast—she does not
 describe thir dress nor horses; that is her statement. Well Desha
 says that he turned off to Dennison's. But there seems to be a con-
 tradiction in the prisoners statement for he told Reed one thing, and
 another of the witnesses, another thing. Did he go to Dennison's?
 Where is Dennison? Desha stated to Reed that he got the mare of

a man whose name was John Baker, on whom he had held a note for about five years; that when they were about trading, he produced the note, and Baker recognized and received it in payment for the mare. Is not this something extraordinary? His having a note, the consideration for which, he says nothing about, and having it, of so long standing in his pocket, is it not strange? It would not have been difficult for him to have procured the witnesses who tested the note, or at least to have been able to recollect its consideration; for there are but very few young men, at the age of nineteen as he must have been, engaged in such a multiplicity of business, that they cannot recollect the consideration for a note of that amount; but nothing of the kind is stated. They say he might have been one of this bandit, one of the Rob Rays; but Desha meets him directly after turning off to Dennison's how did he get so soon to the fatal spot? He was met within a quarter of a mile of the place and next to Ball's. One of the gentlemen said, that a man of the name of John Baker passed not long since to Indiana—is that evidence before you? Recollect how his statement hangs together—meeting an individual who had owed him so long, and fortunately having the note, he gives it for the mare which his debtor is riding! I recapitulate the circumstances gentlemen, but do not permit me to throw a mist around your better judgment. I aim at no such thing. His state does not end here—a bill of sale is given, a witness present. Where is he? We did not choose to give them notice to produce the bill of sale, but we were permitted to prove his existence. His safety required its production. I recognize the principle offered by Maj. Barry to be correct—if they had produced it the attorney for the Commonwealth might have prevented its admission. It is a circumstance taken in connexion with others, calculated to excite suspicion; it makes a link in the chain. So far we have traced the probability of the prisoner's statement, let us pursue the track a little further. A week after Baker's mutilated mangled body was found, a search is made; Desha's whip, or one greatly resembling it is found; the saddlebags, clothes, pocket book, &c. of the deceased found near the fence of the prisoner's father; which as Col. Brown says placed him in suspicious circumstances. What other circumstance existed which was calculated to inculpate him? He was seen that very day starting from Doggate's with the deceased towards Limestone. Baker's mare (as I will call her for the sake of distinction only) is seen running up to Ball's, and Milton Ball (as was quite natural) mounted her and rode back until he met Desha. The gentlemen say the mare would not have taken that road. But I will ask whether an animal of that kind, alarmed or under whatever circumstances, is not inclined to retrace its steps? Is this statement consistent with the evidence? Recollect the circumstances under which Desha was met; young Ball says that he had a pair of saddlebags on his arm, a pocket book sticking out of his pocket—no whip, although he had when he left Doggate's just before

fore-
saddl
Genl
book-
charg
you d
err-?
witne
fessco
regar
ny ye
I hav
of Mi
who t
duct
judge
say th
you t
ranta
Ball
and a
doubt
is ma
whiel
thre
of se
of E
Say i
has t
winer
such
and e
their
fact
cross
got a
pate
Davi
horse
auth
thori
son-
pock
back
If un
was
more

fore.—Whence those saddlebags and pocket book? Did he buy the saddle and bridle? Reed says that Desha said he bought the bridle. Gentlemen say that they are authorized to deny his having a pocket book—they say these are the Bandit, the Rob Roys, not by direct charge but by implication. Were you ever in Courts before? Did you ever discern so nicely as to tell the very point on which a witness errs? What are the means through which you are to impeach a witness? Is it through the round assertion of counsel, and their professed knowledge of Human nature? But of this I have spoken. In regard to the testimony of Milton Ball, permit me to say, that for many years I have been an observer of witnesses in detailing testimony; I have seen men, boys and children examined; but never saw a boy of Milton Ball's age, during any examination of two hundred questions who preserved greater marks of truth. Mark the manner and conduct of that boy, for those are the means, through which you must judge, as there is no contradicting testimony introduced. Gentlemen say that he contradicted himself; I think otherwise.—So it is left for you to decide between us. There have been ungenerous, unwarrantable attempts to consign his character to infamy. Elizman Ball, I acknowledge did exhibit marks of indignation, of testiness, and a refractory disposition, which was highly culpable. It was no doubt under a foolish impression which prevails out of doors that it is manly; but was there no excuse for him, when he knew the attempt which was bent to be made against him? It is said that he is an itinerant vagrant, &c. wholly without ground. Every member of society Gentlemen has a character of some kind, and that of Elizman Ball has as great a right to be protected as any other. Say if you choose (but dont understand me to say so) that what he has told you, shall go for nought, or is untrue. He is said to be an itinerant lawless person, and law read to prove what constitutes such character; but it is proven here that he works for his support, and earns his money in an honest way. It is these two, and old Ball their father, who prove the possession of the mare by Desha; of this fact you must be satisfied; what did he say to Reed? that soon after crossing Johnson, he got down to tie his finger, and that his horses got away; his bridle was found nearer the body—will not this exculpate the Balls? He mended that bridle at Doggate's as is proven by Davis, and whether or not he acknowledges the fact of losing it, his horse ran up to Ball's without one. Gentlemen say that they are authorized to doubt, whether he had saddlebags; but what is this authority? It is the perjury of Milton Ball or the fallibility of his reason. Gentlemen ask triumphantly whether it had been Baker's pocket book he would not have been the veriest dote, to have gone back for it, and yet they say that he did go back for the pocket book. If unhappily he was the murderer of Baker, that in all probability was Baker's pocket book. It is proved that he was not a man of money, or at least his appearance gave no evidence of it; upon that

subject, men judge differently—One supposes that gaudy, topsy-turvy apparel, is a mark of wealth—but the more experienced suppose, a man to have money who rides a good horse, is of an humble appearance and pursues his journey, without making any splendid display. Let us progress with the circumstances. In addition to Milton Ball's seeing those saddlebags, there is a circumstance which impresses my mind; they were found with spots of blood on them on Wednesday or Thursday before the body was found; for their being placed where they were as well as the position of the body in regard to the road I cannot account; but there is perhaps with some a confidence that they are above suspicion. I shall not however labor to prove probabilities. The shirts and saddlebags were found with blood on them, from hands (says Mr. Rowan) reeking with blood. Which is the most probable, that those saddlebags were examined when, and where the murder was committed, or afterwards, when there was time and opportunity? There is but little blood or appearance of it on them now; but in the space of three months would not the blood dry up considerably? If the blood on them had proceeded from the body of the murdered man, would there not have been more than the witnesses prove? Hereby hangs an insurmountable difficulty; how these saddlebags were found bloody on Thursday or Friday if the body was not killed until afterwards. Mr. Rowan seems, in addition to his transcendent legal powers, to have entered so deeply into the science of Medicine, as to be able to assert (which he did on yesterday) that Baker could not have been dead more than twentyfour hours, when found; if that be the case, whence the blood on the saddlebags Wednesday or Thursday? Whence the blood on the shirts? It will not hang together.

It is a principle that negative evidence is never conclusive. Milton Ball says that he did not see a whip—the prisoner had one when he left Doggate's—fragments of one were found there. But say the gentlemen persons could not pass without finding them; I do not suppose that orderly men, passing along chatting, would of necessity see them. It strikes me that the whip which he had at Doggate's might have been identified; but Mr. Rowan says that only delicacy prevented its being proven by the relations of the prisoner—what mistaken delicacy! It is a refinement upon delicacy—the law imperiously requires its production. There is no evidence that he retained in possession the whip which Prather and others saw him have; the one Ballongal saw him have had a lash—the other had not. They say there are many like it, many of the same description. Collins says that he believes these are the fragments of the one which Dasha had at Whitaker's; but where is it? My God! how soothing would it be to every mind to see it—you would not then acquit because you doubted but because you did not doubt.

In relation to the pocket book, Mr. Rowan says that they could have proved the pocket in Dasha's roundabout by his tailor; but

Rowan
ped th
book—
identit
ic. at
Mr
longer
you r
dence
I wish
been
pose;
its us
quite
broke
struc
to be
coun
said
pon;
woul
the l
wea
ed i
den
spec
tere
and
hav
dea
is t
cea
up
ed
Re
the
ge
—
wi
to
Is
re
te
ou
th
J
w

Bowen is an honorable man, but he is no witness.—Prather examined the day before for tobacco in his pockets, but saw no pocket book—Ball saw one stuffed in his breeches pocket—the one here evidently was Baker—could it have been placed where it was by magic, and not by human hands?*

Mr Chambers further said, that he would detain the jury but a little longer indeed but little more need be said; be careful gentlemen that you regard nothing that I say which is not warranted by the evidence. A variety of opinions are entertained in relation to the whip. I wish to make a few remarks on that subject. The fragments have been exhibited to shew you whether or not it was used for that purpose; its shattered condition is relied on as an evidence to disprove its use—but taken in connection with the wounds on the head, it is quite natural to suppose it was. It is worthy of remark that it broke at the termination of the lead; you will find from the construction of the whip, it would break at that very point. It appears to be cut, upon which they rely, but how that is, is not for me to account. Next is the wound in the breast and how made, a physician said that it looked as if made with a square or round pointed weapon; they say that this dirk was not used at all, for if it had been, it would have been fatal. From my experience I think in that part of the body, it would require the strongest arm, to penetrate with a weapon of this kind—if it had been used slaughteringly, or if obstructed in its course would it not have bent? Are there not other evidences of additional violence on the breast? But theorizing and speculating upon the subject, they ask whether it would not have entered the cavity of the body. Doct. Drake said that he probed it and found it to be two and a half inches in depth slaughteringly. You have examined the shirt and waistcoat with patience; they have endeavored to prove that they were not on him when killed, but where is the evidence of that? It would be very strange to strip the deceased and then make these holes; murder may be committed as well upon a man that is clothed as one that is not. The idea is bottomed on the supposition of a combination against the accused. General Reed said that he had from time to time examined the clothes, but the most he says is that he did not see those holes; it would be dangerous, or at least difficult to swear, that they were not there. He

* His Excellency the Governor, here stated to the court, that when in Frankfort, some little time after suspicion had attached to his son Isaac, Doct. Desha, another son, told him that he saw Isaac return home on the second of November with his whip, which remained in the house for several days, but that the house was afterwards broke open, and the whip with sundry papers was taken out, and hoped that it would be admitted, which was objected to on the part of the prosecution. After some little deliberation the Judge decided that to admit testimony agreeably to the request, would be improper and irregular upon principle.

said that he examined them a half dozen times at least after the inquest—and are you for that reason in contradiction to what Orear says, (and he examined them not without motive) prepared to say that they were not there? Orear says they were. What says Sumeril, on the subject? He would not speak positively, until he examined the clothes himself, and found them—he then recollected them, and here let me say that for integrity and truth no man stands higher than he does. Mr Basset speaks unequivocally and says that he believes he showed them to Reed—Reed's negative testimony then will not be taken against this. It is with pain that I make any comparison between any of the witnesses; Gen. Reed is a countryman of mine but however reputable, or how much soever eulogized, in this cause he does not rank above either of these. He is exultingly compared with Marshall, and it is triumphantly asked by Mr Rowan, where he was when Gen. Reed was defending in the field, the liberties of your country—he was a boy. Had he been here, he might have asked that gentleman where he was at that time, and what conspicuous part did he act in promoting the measures of the general government. Permit me to say that Marshall maintains an attitude in this cause, of which in future he never will be ashamed. A passing remark in regard to the blood on the mane of the mare.—Major Barry says it may have been from the finger of Desha—it may have been—but may it not have been from the inclination of the head that way? Another circumstance to which they would attach great importance is, the sbod track which led to the breeches when Desha the day before had on a pair of broad heeled shoes. There is another circumstance which may account for this—he was seen going in that direction at the dawn of day the next morning, and had sufficient time to have changed his shoes. If such an idea as they would advance on that subject, is to have weight, God help us! Upon the circumstance of little Pepper's distinct recollection of the conversation—his father proves the time his son was there—they had only to go back a week, by a recurrence to circumstances he is enabled to fix the day. Permit me to say that Mr. Pepper is an honest and an honorable man, but if he is not you are not convinced of it from any evidence before you. Your own reputation is too sacred to treat slightly the character of others.

Another circumstance—the horse tracks leading from Ball's fence in the direction where the clothes were found—no gentleman contends that the hiding of those clothes was a nocturnal business—there is no account given you of his course, or what he was at that day—it would have been natural for them to have proven it—it was natural that he might have pursued twice the same way—these may have been the tracks of hunters as it is proven these woods were often frequented by bird hunters; they were fallen upon perhaps midway between the body and clothes, I do not think it necessary to say more upon that subject.

Some stress has been laid upon Mason Ball's not having been produced before you; what ought I to say in reply to an insinuation that witnesses have been hunted up against the prisoner, and those who perhaps might be favorable kept back? In the name of God is the prosecutor here capable of a course of this kind? I had nothing to do with it, I was in Frankfort when the venue was changed. I had no part in summoning the witnesses, and the poney purse of which they speak was not raised until after the indictment was found. I can see no ground for the charge of keeping back Mason Ball, the waggons, or any other witnesses. Sullivan, your prosecutor says, started, but was taken sick on the road and did not get here until the examination was closed; Maj. Wall says that the process was not served on some of them in time. I would ask in reply why they did not produce them on the other side, if they thought those persons would have been of importance to them?

There is another circumstance in this cause, which has been rendered of magnitude by the unbounded talents of the gentleman who closed the argument for the prisoner, to wit—that of the body's indicating a recent death. But I have endeavoured to shew you that the blood on the clothes and saddlebags did not proceed from Baker; and yet he says most positively, from his own experience, from the laws of nature and philosophy, that the body when found had not been dead twenty four hours. He goes upon the evidence of General Reed; he says that the body when found was limber, but afterwards became stiff, the gentleman contends with some plausibility that after a dead body is once stiff and then becomes limber it never afterwards stiffens? yet the extraordinary circumstance, that after all the evidences of putrescence in this body, such as swelling, turning black it stiffened did happen, contrary as Mr. Rowan says to every law of nature—So that upon the supposition that he is right, there is something extraordinary in this. They rely on Gen. Reed to prove that there was no blood on the shirt collar. I recollect the evidence differently—it is for you to decide. It is proven by Ball and Mr. Chancellor that in shifting the clothes of the deceased that they received a very offensive smell—Mr. Ball says that the blood settled in his back which also smelled. Gen. Reed thought that it smelled some; men vary in their opinions on almost every subject, but take all these circumstances in connexion, as to the situation of the body when found, and give them their proper weight; Gen. Reed corresponds with the other witnesses except as to the degree of scent. He says also that the beard grew; but the Doctors say differently—Mr. Rowan says that he has a convincing proof of the fact which is, that after Charles had been dead for two hundred years, he was taken up and his beard was found to be two inches long—he thinks that sufficient respect would have been paid to his Royal face, as to shave it—but whatever respect was paid to his face, they respected his head so little as to take it off. He ought to examine whether it

was fashionable at that day, for all to go with their beards shorn but this is all newspaper account—it was the time of the revolution when Cromwell put down the King. At the interment Gen Reed thought that the beard had grown, but one of the inquest thought that his face had swelled. The physicians say that the shrinkage of the flesh gives the beard an appearance of growth—Doct Frazier gives it as his opinion, that it is a popular but an erroneous superstition—Mr. Rowan though, in the plenitude of his knowledge, says that the authorities which justify this opinion are modern and not as much to be credited as those which advance the belief that it will grow; yet if he had found necessity otherwise, his opinion might have been different. The bandit so much harped upon is the effect of Capt Paul's imagination.

I have taken such a view of this case (said Mr. Chambers) as presents itself to my mind. I have no inclination were I able to follow the gentlemen through all their wanderings. I have not endeavoured to reach your feelings. I might have compared the situation of Baker's relatives and friends, but it is all extraneous, and foreign to the subject. You are to rely on nothing of the kind; you are to believe and build your verdict only upon the evidence, and I am sure that you will discharge your duty. I am not disposed to trample upon the opinions of any one and particularly yours. I only wish you to do him that justice which is due, recollecting that the humblest citizen of the Community, has the same rights with him, or the most exalted.

The arguments of the counsel being closed, the jury retired to their room to consider of their verdict; having remained in their room some time, it was ascertained that they had not agreed in their verdict, and it being in the evening, the court adjourned until Monday morning at nine o'clock.

MONDAY MORNING, JANUARY 31, 1825.

Met pursuant to adjournment:

The prisoner and the jury having been brought into court, the court asked the jury if they had agreed in their verdict. A jurymen replied that they had. The clerk enquired who was their foreman, and upon being informed that Charles Kelsoe was, he requested him to step forward, look on the prisoner, and say whether he was guilty or not guilty. The foreman stepped forward, and said that the verdict of the jury was, that the prisoner was guilty. The counsel for the prisoner then moved that the jury be polled and say individually whether the prisoner was guilty or not guilty. Each of the jury upon being asked by the clerk whether the prisoner was guilty or not guilty, replied he was guilty, except Joshua Jones, who said that he was satisfied from the evidence, of the guilt of the prisoner, but he thought that there was a possibility of his innocence,

and room for doubt. The counsel for the prisoner asked Mr. Jones if there was room for a reasonable doubt, he replied that he thought there was—the counsel then stated to the court that the jury had not agreed in their verdict. The clerk after a pause, again asked Mr. Jones whether the prisoner was guilty or not guilty; he replied, that he thought from the evidence he certainly was, but that there was still he thought a room for a doubt. The court after a considerable pause, asked him if he agreed to the verdict of his fellow-jurors; he replied that he did, and the court directed the clerk to record the verdict, and discharge the jury. The court then asked if there were any motions to be made by the counsel. The attorney for the Commonwealth replied that he had none. The counsel for the prisoner moved the court to adjourn till 12 o'clock, at which time, if there were any to be made on the part of the prisoner, his counsel would be able to present them to the court. The Court thought it would be reasonable to grant the indulgence; ordered the prisoner to jail and adjourned till 12 o'clock.

At 12 o'clock the court having met according to adjournment, the following grounds in substance for a new trial were submitted to the Court by the counsel for the prisoner. 1st. That other persons were suffered to converse with the jury, and that such conversations were calculated to influence their minds. 2nd That a communication in writing was found in the jury room containing such threats and menaces as were calculated to influence the minds of the jury. 3d That some of the jury without leave and unattended by the sheriff, absent themselves from the jury room. 4th. That the sheriff was frequently in the jury-room and slept in it at night. 5th. That Doct. Frazer and others were in the jury room, and conversed with the jurymen. At the request of the counsel for the prisoner Mr. Kimbro the deputy Sheriff, was sworn. He stated that on Saturday, the day that Mr. Chambers addressed the jury, after the court had adjourned for dinner on going into the jury room with the jury a paper was picked up near the door and read in the presence of all the jury, which in substance was as follows. "If it is not presumption to dictate to so respectable a jury, I would suggest that if the jury do not hang Dasha, they will be hung up in effigy." With respect to my having slept in the jury room, I thought it was my duty to do it. There were plays performed in the third story of the Court house during the trial and I thought it necessary to be with the jury while the people were going in and out to the play to prevent improper conduct. When the Court had adjourned after having taken the jury to the room furnished them with wood &c and locked the door, I generally staid away until I thought they were going to sleep when I returned to their room and slept by the fire. As the lock on the door was not a good one I slept in the room to prevent reflections being cast on me should any of the jury act improperly. The Court ordered me not to suffer any person to converse with the jury unless I was

present; I obeyed the order as well as I could. One night I awoke and saw one of the jury in the door, I charged him with having been absent but he denied it. If any of them were out of the room I did not know of it.

Question by counsel for prisoner.

Has any idea ever been communicated to you that the jury were out of their room? *a* It was rather my impression that one or two of them had been to their houses. *q* State what you know about it. *a* They gave intimations on the subject sometimes; but I don't know that any of them were out. *q* Was any person in the jury room that you know of. *a* Doct. Frazer came to visit my brother on the jury, who was sick; he spoke but a few words to him about his complaint and went out, I went with him for some medicine for my brother. *q* Did the Doctor converse with your brother. *a* He barely spoke to him about his complaint and then retired. *q* Was Thomas Rankin in the jury room. *a* He was; he came for some chairs; I put him out as soon as I saw him. *q* Who else was in the jury room. *a* The servants who brought the victuals for the jury. I do not recollect of any other person having been in, except Mr. Lamy and Love deputy Sheriffs; they were there sometimes attending the jury. *q* Was not Mr. Stewart there. *a* I do not recollect that he was.

Question by attorney for Commonwealth.

Do you recollect of having had any conversation with the jury about this trial. *a* I avoided every thing of the kind; I told them I did not wish to hear their opinions and they will now have the justice to say so. *q* Did you hear any opinions expressed. *a* From some remarks which I heard accidentally I thought they had formed an opinion. I heard them intimate that they wished the judge would not adjourn court, but remain until to day. *q* Were not the jury indignant at the paper communication. *a* They were. *q* Did you hear what they said about it. *a* I heard some remarks about it; I am certain they were very indignant at its contents. *Quest. by a Juror*—Did you not hear the Jury say more than once, that the man put the paper in the room was a rascal. *a* I did.

Question by attorney for Commonwealth.

Did you not reproach Mr. Rankin for coming into the room. *a* One of the jurors shook me and I jumped up, and saw Mr. Rankin. He told me he came for his chairs and said that he did not know that there was any impropriety in it—this was yesterday evening about sundown.

Question by counsel for prisoner.

Have you seen any of the jury out of their room. *a* I have not. It was remarked by the Court, that if a juror goes out of the jury room it is a contempt of the court, and he may be called on to purge himself of the contempt.

The Attorney for the Commonwealth observed to the Court, that he thought the authorities were against it, but said as he was not a

were of the grounds for a new trial, that he was not provided with authorities to the point; however he did not think they were necessary on points so well settled. Court—the jurymen may be sworn.

Joshua Jones a juror was then sworn — *Quest. by counsel for prisoner.*

Were any other persons in the jury room besides those mentioned. *a* Two ladies were, the wives of Mr. Smith and Mr. Tompkins.

Had they any conversation with the jury, if they had, state what it was. *a* No sir, we asked them to take seats at the fire. *q* Who

else was there. *a* Mr. Whitehead was. *q* Was there any other person, *a* Mr. North's brother in law I think called him to the door.

Was he there any time. *a* A very short time. *q* Was the paper that was found in the room read and understood. *a* It was; but we thought it was wrong. It was written in a good hand and directed to Mr. Parks. *q* Recite its contents, if you recollect them. *a*

If I recollect right, it was this in substance: "If I may presume to dictate to this jury, I would say that if you do not hang Desha you will be burnt in effigy".

Question by attorney for Commonwealth.

When you learnt the contents of the paper was there not much indignation among you. *a* There was; I felt it. *q* Do you think the

paper and its contents had influence over the minds of the jury. *a* I asked them if it had; they repelled the idea indignantly. *q*

Was there any conversation between the jury and those ladies about this trial. *a* No; nothing at all; it was only concerning their own

affairs. *q* Was the Sheriff present while they were in. *a* He was he conducted them into and out of the room—Here Mr. Kimbro

the deputy Sheriff arose and observed to the Court, that the ladies talked to their husbands whilst he was present; that there was no conversation at any time unless he was present, that he was ordered by

the court to permit any person to talk to the jury on necessary business, and that he did not permit any unless on business.

Question by counsel for prisoner.

Mr. Jones did you see any of the jury absent themselves from the jury room. (The Attorney for the Commonwealth objected to the

question, because he conceived, as he said, it to be against both the law and practice to swear and interrogate jurymen to prove misbehavior in themselves or their fellow jurors. Court. We cannot call

on a jury to disclose the grounds on which their verdict is found—A juror cannot be interrogated so as to implicate himself but I do not

see the impropriety of examining one juror to prove the misconduct of another. *q* by same. You will then say whether you saw any of

the jury absent themselves from their room. *a* I recollect of none who did. *q* Did none of the jury go out after you were empannelled.

a None except to answer a call of nature, and then we obtained leave of the sheriff. There was a dark room in the upper story where we

retired on such occasions. *q* Did not the sheriff leave the key in the door and could not the jury have gone out if they pleased. *a* It

is possible: *q* Has any of the jury told you that they were absent.
a No Sir.

Question by attorney for Commonwealth

Was not the sheriff always with you. *a* He was. I think we rose one morning before he did, I was washing when he got up.

John White, a Juror next sworn.—*Ques. by counsel for prisoner.*

State what were the contents of the paper. *a* I differ from Mr. Jones as to the contents. I think it read that "Mr. Park's effigy would be hung up if he acquitted Desha". I said a rascal wrote it.
q Do you know that any of the jury were absent. *a* I do not.

Question by attorney for the Commonwealth.

Were not the jury indignant at the contents of the paper. *a* They were.

John Wyatt, a Juror next sworn. *Ques. by counsel for prisoner.*

Did any one of your fellow Jurors leave their room. *a* They did not unless the sheriff was with them; I did not.

Nathan Tompkins a Juror next sworn, *Ques. by counsel for prisoner.*

Repeat the contents of the paper. *a* I think it was in substance, that if we did not hang Desha we would be burnt in effigy.

Question by attorney for Commonwealth.

Were not the Jury indignant at it. *a* Yes; I told them to treat it with contempt and burn it, which they did.

At the request of the counsel for the prisoner, John Moore, and Richard W. Porter, were called on and sworn. Richard Porter was first examined

Questions by Counsel for prisoner

Tell the court if you saw any of the jury out of their room. *a* On Wednesday morning last, as I was going to market, I saw Mr. Kelsoe at the corner of the Court house next to the market house.

Questions by attorney for Commonwealth.

Was it about the dawn of day when you saw him. *a* It was a loud day light. *q* What was he doing. *a* Obeying a call of nature. *q* Did you see him go in. *a* No. *Question by court;* Did you see him come out. *a* I did; he came out of the door next to the market house. Mr. Kelsoe asked Mr. Porter if it was not the Wednesday morning before the jury were made up that he saw him, he replied, he thought not.

Questions by attorney for Commonwealth.

Reflect on the day Mr. Porter, perhaps you are mistaken, did you see him conversing with any body that morning. *a* I did not.

John Moore was next examined.

Questions by counsel for prisoner,

Did you see any of the jury out of their room. *a* I saw them in an adjoining room where the scenery was;—the sheriff was in the passage near the door;—I went in to get a bucket. *q* If I understand you the sheriff was in the passage and the jury in the scenery room. *a* Yes; I saw none but the jury and sheriff.

John Miller a juror, next sworn.

Questions by counsel for prisoner.

Inform the court if any of the jury were out of the jury room.—
Court; You will not state as to yourself. a I saw none of my fellow jurors out.

Questions by attorney for Commonwealth.

Do you recollect the day that Mr. Kelsoe went down in the morning. a Mr Kelsoe told me last Wednesday morning was a week that he was going down stairs to obey a call of nature, he was in the room I think, when I saw Mr. Porter pass to market on last Wednesday morning.

Questions by counsel for prisoner

Did not Mr. White leave the room. a Before the jury was made up, he went over to Mr. Rankins with a candle for some water; he was in my sight all the time. q Will you state Mr. Jones as to Mr. White's absence. a I think he was absent. (Mr. White rose and observed to the court, that he had obtained leave to go to the Doctor's to get a plaister for his sore arm;—as to going to Rankin's I stopt over for some water, I saw two men in the front room playing cards, I called for Captain Hall, but no one answered—I returned to the jury room, and I'll swear upon a thousand bibles that I have never conversed with any person about this trial, until to day, after we were discharged. q Mr. White, before the jury was sworn, did you not go to your own house. a I did not. The testimony in support of the motion for a new trial having closed, Col: Brown addressed the Court in favor of the motion; the attorney for the Commonwealth; Mr. Wall replied, and the argument was closed by Major Barry:

Whereupon, the Judge said in substance—That this certainly was a case of the most extraordinary character that had ever presented itself in a court of justice. In my little experience, since it has been my misfortune to be a lawyer, I have never witnessed a similar one. I have been like the rest of the spectators during its progress, and have had great solicitude to understand it,—and confess that my mind has fluctuated between the guilt and innocence of the prisoner at the bar. I cannot refrain from running over some points of the evidence slightly; on the one side, the circumstances cannot be reconciled with his innocence—and on the other it is equally difficult to reconcile them with his guilt.

Upon the subject of the identity of the mare, what is the proof? Moore says, that Baker came to his house about two hours by sun, was intoxicated, staid all night and left there early next morning. He recollects of paying no particular attention to the mare until then, when he thinks that he paid somewhat particular attention to her, and believes this to be the same.

Afterwards when applied to, he did not recollect at first, that Baker tarried with him; but the suggestion of some circumstances he re-

remembered it, and seeing the corpse and mare, he thought that he recognized them. Baker left his house early, after taking two glasses of bitters. He rides to Doggates and asks Davis the time of morning, Davis replied that breakfast was on the table, and asked him if he would have his animal taken, to which Baker answered in the negative. Davis noticed the mare because it struck him, that she would match one of his father's, and probably conversed about her with some of the waggoners. But on cross examination some slight contradictions appear between him and Miss Doggate, Doggate, and Prather; She thought that he was in the house after Baker came, and I think it was an inference which she drew, from his being in the kitchen for water—Davis says positively that he did not bring out Desha's horse; she says positively that he did. Davis thinks that it was just at sun set, when he turned out from work; Miss Doggate thinks it was something later; Prather says, that he rode behind Desha, from Whitaker's to his mother's, and that when they separated, he could not have told him from another, two hundred yards owing to the darkness, which corroborates Miss Doggate's statement against Davis. He thought from his superficial observation that it was the same mare; he noticed her, because he thought she would match one of his father's when one was thirteen or fourteen hands high, and the other fifteen or sixteen. Such an occurrence was calculated to awaken all society to find out the perpetrator; Davis may have had suspicions, and the tendency of the mind is to confirm every thing which is avorse, and reject all that is favorable to the supposed offender. I do not think it entirely certain, whether it is the same mare; in a civil case, I think a jury by weighing the testimony might find it Baker's mare, but that cannot be done here. Taking it for granted that it is Baker's, and the circumstances are strong against the prisoner; he does not account for how he got her—if he got her as he says he did, he is just as unable to prove it, as I am to reconcile her possession with his innocence. The rule is, when a man is charged with guilt, that you must take all he says favorable or unfavorable. You are here placed in this dilemma—that if you believe him guilty, you must believe that a man of high character, and in easy circumstances, without any ostensible motive, would commit this enormous deed. When you first hear a crime alledged against a man of good character, you disbelieve it, and require great evidence of the fact—this is not a rule of law but of reason. Now the question is, whether a man of good character, would commit such an outrage upon himself and upon society, without some strong inducement—I will venture to say that fifty cases of a man's getting property of that kind, in this way occur, where one such murder is committed. Does it not seem more probable, that he would become possessed of her in the way in which he says he did, than that he would commit this murder? There will be great difference of opinion on this subject. Desha stated that Baker started from Doggate's

a little before he did—Miss Doggate says the same. There are some other circumstances against the prisoner—that he turned off to Deanison's and then returned to the road—if he had it would not have been difficult for him to have produced Deanison, but he might not have been at home. In circumstantial cases we must weigh probabilities on both sides—Deanison may, or may not have had a family, those matters are involved in doubt; there are some circumstances which I cannot reconcile with his innocence.

This man must have been killed, and old Ball have examined the mare, before McCarty and others passed, which was about eleven, twelve, or one o'clock; well, if done before this, there was lying on the ground, the cap and lead of the whip, the glove, hat and bridle; it is impossible to suppose, that there was no blood there. Here then, are those four men passing by, they do not see these things—the silver cap is bright and calculated to attract attention, the bridle not found—well in addition, (upon the hypothesis of his guilt) McCarty found the bridle, but saw nothing else, no marks of blood nor of a scuffle.—Another circumstance, that it is the nature of a horse to be affrighted at blood whether human or not. By the next day, the body must have been supposed to discharge some smell or something of the kind—connect these with the body being limber when found, as it is proved by several of the witnesses, the thorax or chest, nor any other part of him, not swelled. It is difficult to suppose that a body at that, or any other season of the year, could have remained that long, without exhibiting some symptoms of putrescence—connect also, that in two or three days after it was found, it did shew such symptoms, as in that time might naturally be expected. There are some other very curious and extraordinary circumstances; the whip itself—it is extraordinary that a whip from the infliction of those blows, would be shattered as this is; for when the lead would fall it could be no more used as a weapon. There is no reason to suppose that the whip should be cut—would he, a man of ordinary sense cut and lay it there? My inference is, that it was not on the ground when McCarty and others passed—the road seems also to have been somewhat travelled—hearsay evidence says that Mason Ball was there, after the murder must have been committed, but this is not to be relied on here. From all these circumstances it seems to me to be impossible, that he could have been killed then or there;—to believe this you must believe that he could lie there eight days and not stiffen—go to market and you will find that a beef killed the evening before is perfectly stiff. Doctors say that a relaxation of the muscles is the first stage of putrescence, that the body then stiffens, but never afterwards unless it is arrested by cold weather.—Well this body after it was found, when removed from one to the other coffin it became stiff—so it seems impossible to me that he was killed then or there; the trail not seen either by McCarty and his company, and when the body was found it could be followed by

the light of a candle. Well, if not killed then nor there, he was killed at some other time and place; what brought him where he was found? He was laying as the witnesses say about fifty yards from, and next the road, a log being on the other side of him. The articles were scattered—it is said that Mason Ball found the glove there several days before, but you have no evidence of that fact. Here is a difficulty upon the hypothesis of his guilt—that he placed those things about there—would it not have been easier for him to take them, and the body, to some secret place and hide them? It is hardly possible that a man of ordinary sense if he would commit such a deed, would scatter and expose the different evidences of his guilt—this is a difficulty hard to reconcile. The saddlebags were found near General Desha's, on some brush or drift wood, there were spots of blood on them which is a strong circumstance to counteract the idea, of his not having been killed before—there was blood on them, and it is presumable that it proceeded from the murderer. Desha is proven to have had a cut finger—it is proven also that there was a cut upon one of Baker's thumbs and not on the other, there was then no blood on it—one conjecture is as good as another, the blood on the saddlebags and shirt might have proceeded from it. Here again, things are placed seemingly on purpose to be found; for the pocket book was thrown out, and paper scattered around it, the clothes partly out of the log in which they were attempted to be concealed, all of which was well calculated to attract the attention of any person hunting them. Well, is it presumable that if he had committed this murder, he would have scattered these things so much like a fool, and with such a manifest design that they should be found? Whether he could do this sooner than become possessed of the mare, as he says he did, is a matter upon which there will be great variety of opinion. On the subject of the tracks;—they are not of very great importance, but it is proven they are not the tracks of led horses, because they were often separated by trees, and laps,—they may have been rode by other persons who *might* have put these things there, or perhaps by hunters but this is only matter of speculation. But it does seem to me that those things were put there to be seen, and that a murderer would do it, is almost impossible.

In relation to the Balls—young Ball caught the mare, went back and met Desha, they then started back and met Elizman Ball—Pepper said that all this happened while he stepped aside from the road on a call of nature—it seems improbable though it might be the case. I have great doubt as to the evidence of Elizman Ball—never did I hear a witness detail evidence in a court to whom I could give less credit. But I think there is no doubt of their meeting Desha. He has the mare and cannot account for her—he had a cut finger and there was blood on the mare, saddlebags and shirts—he had lost his bridle which was found near the ground—all these things connected induce the belief he is guilty—there are other circumstances with which I

cannot
that of
might
sumsta
If I
nocent
been r
rary
differe
others
which
vide
case
with
impro
cause
case
the C
vidua
night
and l
groar
the r
ner f
that
The
not
any
be c
and
que
do
hav
nity
sho
con
do l
whi
cul
ind
tion
sas

cannot reconcile this belief. But it does seem to me more probable, that other persons knowing him to be in possession of the mare, might have availed themselves of it, and the other suspicious circumstances thrown around him to screen themselves.

If I had been on the jury, although I could not have found him innocent, yet I could not have found him guilty; and if a motion had been made for a new trial, on the ground that the verdict was contrary to law and evidence, I should have granted it. There is a difference in authorities, some say, if you have a rational doubt—others that if there is a possibility of doubt, &c. &c.; all which means that you should be as well satisfied as if upon positive evidence; because the offender will be positively hung; who in this case can say that there is no doubt? But if I was myself impressed with his guilt, I would grant a new trial—not because there was any improper communication, which had an improper influence, but because there was a possibility an opportunity for such a thing. In a case which was tried some years ago in the Scott Circuit Court, of the Commonwealth against Brashear, indicted for murder. An individual at the tavern (where the jury were confined,) got up in the night when asleep, and stepped out of the porch of the second story, and hurt himself considerably, the jury from their room heard his groans, went down and afforded him relief; upon this ground after the verdict was rendered, a motion was made on behalf of the prisoner for a new trial; I was then attorney for the Commonwealth in that circuit, and opposed it; the Court however granted a new trial. The facts here are that two ladies were admitted to their room; I do not believe that they made any improper influence, on the minds of any of the jury. Well suppose a new trial was refused, and it should be quoted after in similar cases; that such a precedent has been set, and would perhaps be followed, what in time would be the consequence? There has been conversation at the door, what it was we do not know, nor would I say it was any thing improper, but it may have been. It is only necessary for a person to shew such opportunity, not that it was embraced or availed of. The paper here does show, that there is an intention somewhere to make those improper communications, and when you connect that with the opportunity to do it, justice imperatively demands that a new trial should be granted, which upon the whole I shall grant. I labor under a situation of peculiar embarrassment; but if I should pass sentence of death upon an individual owing to popular sentiment contrary to my own convictions of what law, and justice requires, I should consider myself an assassin of the most cowardly character.



RBR

*

HV

6533

K446

S73

1825

