

coming near Conway's store heard groans and vomiting, found the door open—Witness said Mr. Conway was in liquor. Owen desired him to shut the door. Proposed going to Mr. Bryan's at the Governor's office, as he knew they were intimate. Went and prisoner followed. Knocked at the street door. Owen went by 15 or 20 steps; after some time Mr. Bryan opened a side door. Went in and related the situation of Mr. Conway's store. Soon after Prisoner came to the door. Mr. Bryan said two young gentlemen who were there went to Mr. Conway. Never observed whether the prisoner had a stick or not. After Mr. Conway's death Owen took measure for his coffin, went to Mr. Smith's store for nails; on coming out of the store said he had left his stick at the Governor's office; went for it, on his return said he could not find it. Witness observed to prisoner that they would probably be taken up for the murder.

MR. BRYAN was called by Daughtry as related. Saw Owen standing in the street about 15 steps from the House. All went to Conway's. Found him lying on his back or side behind the counter weltering in his blood. His thumb and fingers inserted into the bows of a pair of scissors. Found his change draws open and empty. Thought at the time Owen did not look and act as a man ought to do on those occasions and suspected him of committing the murder. The stench of the blood and wounds great.

When witness came out of the office heard a Negro hallooing at Conway's; answered him, but he continued hallooing till arrived at the store; found a Negro walking backwards and forwards before the door.

Mr. BARRINGER was at the governor's office with Messrs. Bryan, Conway, Cannon and White. At bell-ringing Conway and Cannon went away. On the alarm given half an hour after, by Daughtry, went to Conway's. Witness ran; Owen followed next, Messrs. Bryan and White followed more slowly with a candle. Heard Conway by the time he had passed the market-house. Found a Negro standing just above the store door, near the kennel—heard no hallooing, but himself called to Bryan and White to make haste. Went in, and directed by Conway's groans, went behind the counter, and plunged his hand into the blood. When the candle came found him on his right side; turned on his face and attempted to rise. A pair of scissors were on his fingers, attached by a piece of tape, still unbroken, to the counter. A piece of checks was lying on the counter, a parcel of coarse hair combs, and he was entangled in a piece of Galloon binding which was unrolled, though the bunch was not pulled off the shelves. Raised Conway up—he vomited, and leaned against a pile of paper. The Negro at the door said he was Christopher's Tom—sent him for Dr. Wheaton, but did not see him afterwards.

The deceased had his coat off. The outside door of the counting-room was shut, and the key lying on the counter. The change-drawer was drawn out, and empty—a few due-bills were scattered on the floor. A candle-stick was on the desk, but without a candle. Carried the deceased to his room, and laid him on a bed. The stench about him was so great that, while holding his feet, he could scarce refrain from vomiting.

Mr. WHITE's Testimony was similar to Mr. Bryan's.

Messrs. Goodwin, Peace, Cooke, Stuart, King and Dudley proved the finding of the pieces of the club near Mr. Conway, the stump and top from which the club was supposed to be cut, their transfer, and their identity when now offered.

Mr. DUDLEY said that late in the day on which the murder was committed he met with the prisoner at Woody Martin's, who asked him to walk into the old field. Prisoner talked of his having been warranted by Nelms' whom he abused in harsh terms. After walking some distance both set down. Prisoner asked witness for a knife to cut down a pine sapling, and cut off and trimmed a club or walking-stick—said he wanted it to kill Wills' dog—asked if it would not kill a dog—if it would not kill a man? Witness said he should be unwilling to have it tried on him. They then walked towards Joshua Allen's. While on the way witness related a story of one Daniel Biddiford employing his brother to kill a woman in South-Carolina. He went to the house for the purpose, but seeing her asleep with her children, his heart smote him, and he relented. His brother then told him how she might be killed without any person doing it: To place a loaded pistol in a crack of the house, and put a piece of spunk, lighted at one end, over the priming. He stopped to finish this story a few steps short of the house. They sat down upon the door sill—Jenny Key was in the house. Nothing was said about killing or striking on the head in the hearing of Miss Key. Owen cut off the rough outside bark of his stick as he sat at the door—did not see him cut the butt, and is sure he did not. Both then walked towards home—at Casso's sign-post met a student, who spoke to prisoner to make him a knotty stick—here parted a little before sunset. Prisoner said, "Dudley, you may go home, I shall go to see my washer-woman." Next morning went with Nelms, who cut the stump and brought it away.

Question by Counsel. Does Wills keep a sharp dog? Ans. Yes. Quest. Is it not fashionable to carry walking-sticks? Ans. The students frequently have curious knotty sticks. Quest. Did prisoner romp, or seem to be intimate with the young lady? Ans. No. He told her he had a wife; she said she did not believe him.

Mr. NELMS said Owen had been indebted to him for some time—had often dunned him—prisoner answered he had \$100 in \$10 notes, that his father had given him, which he did not like to change. Witness thinking he was about to run away, followed him to several places on the day of the murder. Prisoner said he would pay him, but none of the merchants would change his \$10 note. Witness then offered to carry it and return the change. Prisoner said he had not the note about him. Witness got a warrant from Capt. Peace, and sent Wills after prisoner. Went before Armstrong—prisoner got very angry; and, on promise to pay in the morning, witness released him. On going up town, was laughed at for having done so,

and sent Wills after him again. Found him at Woody Martin's, but he would not come.

Next morning, at sun-rise, witness standing in the yard, prisoner passed—told witness to bring change, and he would pay him. Went to prisoner's shop where he was making Conway's coffin—received a five dollar note, and gave him one dollar—thought more was due, but took this rather than quarrel any more. Matilda Goff then came. Prisoner swore much—said if he got any money every body knew it immediately—gave the little girl five shillings. He pulled out a large wad of money, but witness did not know the amount of any of the bills. Prisoner said the reason he did not pay witness yesterday was, because he had no money—he had let a man have his money, who returned it late last night. Witness went with Dudley, and cut down the stump which corresponds with the butt of the club found.

Question by Mr. Seawell. What were the articles in your account against the prisoner? Ans. Foxing boots \$3—a pair of fur tops \$2—and 45 feet of plank. The warrant was for six dollars. Quest. Had the prisoner no account against you? Ans. Yes—he made me a sign at \$1 25. Q. by Mr. Cameron. Had you a settlement? Ans. No.

Mr. STUART went over to Conway's about the time he expired. Was much agitated—Went into the store, and picked several pieces of the club and bark from among the blood. On turning found Owen standing by him. Witness said, showing the sticks, "This will lead to a discovery of the murderer." Prisoner looked astonished. Came soon after to witness's store for lining, ribbon, and other materials for coffin—hastily huddled them up, apparently much agitated. Witness went with Grevide to Owen's shop, to observe him and make discoveries. Prisoner still seemed to behave in a singular manner. On Sunday Dr. Gilchrist and witness went into the store, and found other pieces of the pine stick, which were committed to the care of Capt. Peace. When enquiry was made of witness "who should make the coffin," was so much agitated that he did not recollect Owen could do it till he was named.

Dr. GILCHRIST testified to finding the sticks. Mr. WILLS. After executing Nelms' warrant, the prisoner said he had a \$10 bill, but being given him by his father, he would not change it.

Late in the evening was returning home from the country, met Rambaut near Mrs. Mitchell's, going from toward the market-house, who enquired for Owen. Near Meads' shop met Owen, who enquired for Rambaut; in two minutes after the bell rung. The next morning, hearing prisoner had paid Nelms, went to his shop where he was making the coffin. Witness asked him if he had changed his \$10 note. Prisoner asked why he came there? Said witness would get nothing out of him. Witness said to him he expected he had been gambling, and had won money of the man who killed Conway.

Mr. COOK met prisoner between Conway's and Christopher's, about nine o'clock. Prisoner then had a stick in his hand, but he could not tell what kind of a stick it was. On passing he said "Good night," or "How do ye," and prisoner returned the salute.

Mr. GUIRE saw a man sitting alone in the market-house about ten o'clock, who had his hat down over his eyes. (Not knowing who it was, he was not allowed to state his after opinions.)

Mr. CALLUM was proceeding to state some suspicious conduct of the prisoner, which took place at Shaw's store a few nights before the murder was committed; but it being considered irrelevant to the case, he was not permitted to state it.

Mr. RAMBAUT hearing that Owen was killing about, went that evening to find him, to advise him to go to work, but did not see him. Late in the night Owen came and waked him to go to assist in making the coffin. The next morning saw him pay away money. He was commonly without money. Witness had frequently lent him a shilling or two at a time. Mr. FITS. How did prisoner behave that night? Ans. He seemed much hurried and flustered.

Miss KEY heard Dudley say something about firing a pistol with spunk, when near Allen's house. Soon after heard prisoner say "How?" or "What?" Dudley said, "Strike a man on the side of the head." Prisoner came and sat down at the door, and trimmed his stick, and cut the butt end of it diamond fashion. Don't recollect hearing him say anything about his being married.

Mr. CARD saw prisoner near Dr. Wheaton's at dark; asked him to make an axehead to a wagon; he said he would, for money; that he must or would have money that night, as he had been warranted.

Mr. RUTH said prisoner came to him several times on the day of the murder; tried to borrow five dollars. Said Nelms had warranted him—"That money he must have, and money he would have," which he confirmed by an oath. Saw him the last time about the middle of the afternoon.

CAPTAIN SCOTT, Deputy Sheriff, said, that after he had carried Owen to jail by order of the examining Justices, he searched his clothes, as he did all his prisoners, for weapons. That he found a two dollar bank note in his watch fob. Owen pulled off his shoes in a singular manner, and witness found in one of them two hard quarters and a Virginia snuffbox. Prisoner had on loose pantaloons, open at bottom. Found no other money about him.

A statement of the Examination of John Owen was offered, taken before the Court of Inquiry, consisting of Messrs. Boylan, Peace and Cook. Quest. by Seawell. Is this a report of the examination at full length? Mr. Boylan. Only of what was deemed material. Quest. Was it reduced to writing at the time? Mr. Boylan. It was, except a little interlineation, which has since been made. Quest. After being written was it read over to the prisoner? Ans. No. By the Court. Did you write down every thing, as well that which was in favour of the accused, as that which was against him. Ans. No—only that which appeared against him. Court. The examination is essentially defective in several particulars, and cannot be received as evidence.—The design of records is to save evidence from the slippery memory of bye-standers. In order to give the criminal the benefit of his confession that it may not be explained against him, the law requires the record to contain the entire examination and confession.

The Evidence for the State having been gone through, the following was offered for the defence: JOSHUA ALLEN said Nelms' character in Johnston, where he had formerly lived, was a sien-

der one, he could not there be believed on his oath, his neighbours spoke of him as a bad man.

Question by Mr. Seawell. Do you know Christopher's Tom? Answer. Yes. Q. Has he not a bad character? A. Yes. Q. Do you know of his having been flush with money shortly after the murder? [Witness stopped: Testimony not being considered relevant.] Mr. Seawell appealed to the court whether the confession of another person taking the guilt to himself, was not proper to be given in evidence? The Court. Not Tom's—nor any other persons, made to an individual. Mr. Cameron. Suppose we can show from probable proof that some other person was the murderer, would not that be received as evidence? The Court. Certainly it would.

Mr. ROYSTER said the prisoner came to his shop, a few days before the murder, to get two dollars, which he owed him. Having an account against the prisoner and being very busy, witness endeavoured to put him off, by saying he had nothing less than a five dollar note; prisoner said he would take it and give three dollars in change; witness then said he had nothing less than a fifty dollar note; prisoner said he could change that also; witness told him he did not believe he had any money; prisoner then pulled, what appeared to be a bank note, partly out of his pocket book; witness told him it was only a one dollar note; prisoner offered to bet ten dollars it was more than twenty dollars; witness agreed to bet, but on the prisoners appearing eager witness declined; prisoner formerly worked with witness; seemed always to have money; never saw any, but judged so from his frequently having cakes, & other trifles that are to be had only with ready money.

Mr. BARKER was at Roysters when prisoner came to get money, and his testimony was the same as the foregoing.

GEORGE GRIMES, a lad, saw Owen about nine o'clock, near the Market-house; they walked down the street together. Owen soon left him to meet some girls, who were coming up the street on the other side; met Christopher's Tom at some little distance from the witness; Tom proposed to give him a grape-vine stick for Owen's pine stick; prisoner then said "did you come honestly by it? I should not like to have the owner challenge me for it to-morrow." After a few words they exchanged sticks.

Question by Mr. Potter—When did you first give this evidence? Answer. Not till this court.—Q. Why did you keep it a secret so long? A. I did not wish to meddle and get myself into business. Q. When did you first disclose your knowledge of any of the circumstances? A. Not till a few days ago when Owen told me he had summoned me, as we had been together that evening. By the Court. Was it dark when you and Owen walked down the street together? A. Yes. Q. How far could you have seen the stick? A. Not a step. Q. How came Owen to know that Tom's stick was a grape vine? A. I don't know. Q. How do you know they exchanged sticks? A. I supposed so from their talk.

Mrs. Davis said that about six weeks after the murder, as she was sitting at her father's door, she saw Christopher's Tom walking by ginging hard money from one hand into the other. There were several small pieces of money.

Mr. Emund testified that Owen came in the night and awakened him to borrow a hammer to make a coffin, said Conway was dead. Witness having seen him well in the day, asked if he had been fighting a duel; prisoner said no, somebody had murdered him. Witness went up to Conway's very early in the morning, saw a Negro there who had blood on his pantaloons; did not know the Negro. Witness was much agitated. Some time after saw a Negro there who said he was Christopher's Tom, does not recollect him to be the same Negro he had seen there before—Tom said [Witness was stopped here, this kind of evidence not being proper.]

Testimony was adduced in favour of the character of Nelms, a witness for the State. Dr. Jones said he had been acquainted with him several years in Johnston county and had known him 3 or 4 years in this city:—Never heard any thing to his prejudice except that he had loved to hunt better than to work; had never heard of his being a witness before in any case. Hartwell King testified in favour of Nelms' character.

The pieces of stick found in Conway's store corresponded exactly with the stump from which Dudley proved that the prisoner cut the club—these were offered the Jury.

The Attorney General then opened the cause to the Jury; he briefly recapitulated the chain of evidence. The prisoner's pecuniary distresses, his having the club, his speaking so emphatically of 10 o'clock, his loitering about the place of the deceased, his stopping to avoid the observation of Daughtry, his suspicious behaviour after the murder, his having money the next morning, and his secreting money in his shoes. He then adverted to the law of murder. He said positive evidence was not necessary. Circumstances would be admitted in cases of murder that would be admitted in no other case, for the reason, that the person injured could not give evidence. Quoted M'Nally 577, on presumptive evidence—"Conjectural proof must be probable; Jury must not acquit where there is only a possibility of innocence." 1st East, 223, 4, "Improper to convict upon a suspicion of murder till the body is found—the conduct of the prisoner should be such as is reconcilable with the facts"—The jury he said would be governed by their belief arising out of the circumstances. If they believed him guilty from the evidence they had heard, they would say so. If they had strong doubts, reasonable doubts, they would bring in a verdict of not guilty. The Attorney-General's speech was short but pertinent and luminous.

Messrs. Seawell and Cameron followed in behalf of the Prisoner in speeches of great length and ability. Mr. Seawell went into a very ingenious and minute analysis of the evidence. The prisoner's appearance and behaviour at Conway's and elsewhere he did not think singular. All were agitated, but from Owen's situation suspicion was most ready to light on him. Mr. Stuart says he was so much agitated that he did not recollect Owen was a cabinet maker and could make the coffin. Mr. Stuart thought Owen's countenance exhibited a very singular appearance, and quite likely Owen at the same moment was thinking the very same thing of Mr. Stuart's. Doctor Bogle says he instantly set himself to make discoveries, and no wonder if to the eagle eye of prejudice poor Owen's countenance caught his attention, for he says he

instantly thought the uncertainty of his appearance did not suit the place and company he was in. The prisoner's behaviour when he saw Conway's body can be more reasonably explained than by supposing it to guilt. Though a Surgeon has told you you can not perceive any uncommon stench, his feelings and sensations were fortified by the frequency of wounds of wounds and blood; but two other witnesses say it was to them intolerable; and, though at his last could hardly refrain from vomiting. Was Owen alone to be without sensibility or feeling? Suspicion must rest somewhere—Owen being the first person present, and in the opinion of many, the best object for suspicion it rested upon him. They clubbed their suspicions, each added to that of the other, reports blazoned them into size and gave to them the realities of truth and fact. The evidence of Dudley might be incorrect. It is in conformity that of Jane Key:—If incorrect the first link of circumstances upon which all the others depend is gone. Miss Key is certain Owen cut the butt of the stick into a Diamond shape. Dudley did not see him cut it in this manner, though he might have done it. Positive evidence is always greatly superior to that sort of negative which has only no knowledge of the fact. There is no reason to disbelieve Jane Keys; and if she do believe her must believe Owen innocent. On the other hand if we do believe Dudley's evidence is correct we can hardly suppose Owen intended any crime when he cut the stick, for he would not take a witness to convict him. Dudley says he cut round the the sapling and broke it off. The stump shows it was a very rough break. Is it not extremely improbable he should at the two different times be was trimming his stick, have neglected to trim its rough ragged end upon which his hand was to rest—a probability strengthens the evidence of Jane Key. This club then would not fit the stump as the fragments found in Conway's store do. Is it impossible that two fragments of wood should fit each other that did not once grow together? It is possible, and does too often happen to suffer the life of a fellow man to rest on the impossibility. The evidence of Grimes, he mentioned, had every mark and character of truth. Had it been a fabrication he would have been more pointed and decisive. But he manifests a caution that belongs only to a conscious regard to truth. If his evidence is true, though he does not say he saw the exchange of sticks, we are compelled to believe it took place, and that Owen was in possession of the pine stick when the murder was committed.

Upon Nelms' evidence he expatiated at length and with severity; stated his recent quarrel with Owen, the manner of balancing his account with him, and the probability of his testimony being prejudiced and incorrect. Daughtry's first meeting with Owen he dwelt much upon, and thought the representation of his own and Owen's conduct unnatural. The prisoner being so often seen in the streets that night was a circumstance of alleged suspicion; but a young man could find an excuse for this rambling, which, if not very honourable, was, at least, not very criminal. Owen is suspected, because he was first at Conway's door, and if he had been somewhere else he would have been charged because he had flown. There is no proof—there are only circumstances, and these depend, some of them, on very slender testimony; too slender to affect the life of a fellow man. Mr. S. then read an opinion of Judge H. de. that it was better a hundred guilty men should escape, than one innocent man perish. To shew the extreme caution with which even strong circumstantial evidence should be received, Mr. S. produced cases from different authors. A horse-thief, being closely pursued, overtook a man walking, and desired him to lead his horse for a minute while he stepped aside. The footman did so he was immediately overtaken by the pursuers, and executed for the theft. The thief was some time after condemned for another crime, and under the gallows made a confession of stealing this horse, and related how he had shifted the suspicion and the punishment upon an innocent man.

A man was missing. Another was suspected of having murdered him, and burnt him to ashes in an oven. The imaginations of the enraged and terrified community, soon found circumstances enough. His not quite consumed bones, and parched beads, were found among the ashes, and the oven emitted a very uncommon effluvia. The accused was condemned and executed. Some time after the supposed murdered man (who had been carried away by violence) returned alive and well.

A man rode out hunting, shot off his gun, and then rode along the road with it empty. He soon after found a man lying dead in the road, who had been shot—what should he do; if he remains he will be accused, if he flies there is no doubt of his guilt. He remained with the body and was immediately taken. The flint, the smoke of the powder on the gun, all proved it to have been recently fired. He only saved his life by the timely apprehension of the real murderer.

An Uncle was correcting a niece, to whom he was heir at law. She was heard to say "good uncle don't kill me;" from that time she was missing. The uncle was brought before the assizes, and was allowed two terms in which to produce his niece.—Not being able to find her, and terrified for the consequences, he procured a girl resembling her, dressed her in the same manner, and produced her for the niece. The imposture was detected. The uncle was tried condemned and executed. After some years, the niece, being of age, returned to claim her estate. It appeared that dreading her uncle's severity she had run away.

Mr. S. cautioned the Jury not to receive recourse for fact, prejudice for truth. They had heard in the evidence lately given how difficult it was even for a man of intelligence and candour to separate fact from rumour; how that he had seen from what he had only heard. How much more cautiously ought they then to receive the mass of evidence from the various persons who had offered it. Mr. S. concluded a speech of between two and three hours, with a most eloquent and forcible appeal to the justice and humanity of the Jury.

Mr. CAMERON followed on the same side: He took a very comprehensive view of the case, both in regard to law and fact. He exhibited many parts of the evidence in a new light—endeavoured to show that the witnesses had located all the time of Owen in such a manner as to leave none for the perpetration of this crime. As he principally occupied the same ground with Mr. Seawell, we shall not again go over it. All that genius could invent or that learning could furnish seemed to be exhausted in the defence.