

CASE OF PROFESSOR WEBSTER.

For the Daily State Register.

Since reading the communication of one of the jurors in the case of Prof. Webster, I very much fear that he has been made the victim of false logic.

This communication says: "The various articles which were put into the case were examined by the jury, and particularly those things which seemed to bear most strongly against the prisoner. The final decision of the question was resolved into three parts:"

"First.—Are the remains of a human body found in the Medical College, on the 30th Nov., 1849, those of the late Dr. George Parkman?"

"Second.—Did Dr. George Parkman come to his death by the hands of Dr. John W. Webster, in the Medical College, on the 23d Nov., 1849?"

"Third.—Is Dr. John W. Webster guilty, as set forth in the indictment of the wilful murder of Dr. George Parkman?"

The questions are all found in the affirmative.

Now let us consider what were the matters of fact in controversy before the jury, and how they ought legally and logically to have been considered. The allegations on the part of the Government were, that Dr. Parkman had been missing since about two o'clock, p. m., on the 23d Nov., 1849; that he had last been seen to enter the Medical College; that one week thereafter his remains were found there, and that he never came out of the college after he entered, at or before two o'clock, p. m.; and that Dr. Webster had murdered him.

The defence was that Dr. Parkman was seen in the streets of Boston, after two o'clock, p. m., on the 23d November, and that the accused knew nothing of the human remains found in his apartments.

The proposition that Dr. Parkman was seen outside of the Medical College after two o'clock, on the 23d November, was an affirmative proposition set up by the defence, and which if proved, went utterly to defeat the case made out by the prosecution. Now in my judgment, this proposition should have been considered first, and the issue involved in it decided by the jury, before they went a step farther. In pursuance of this course, let us suppose the jury propounding and deliberating on the question.—*Was Dr. Parkman seen outside of the Medical College, after two o'clock, on the 23d November, 1849?*

All the testimony shows that Dr. Parkman did not enter the Medical College after 2 o'clock p. m. The time of such entry was probably nearer half-past 1 o'clock p. m.

Mr. Wentworth, a provision dealer, had known Dr. Parkman for two years, and saw him on 23d November, 1849, at from half past two to half past three o'clock p. m. He fixes the time in a manner perfectly satisfactory to himself. Now the testimony of this one witness, uncontradicted, proves the fact that Dr. Parkman was seen outside of the Medical College after two o'clock. It is positive evidence of the fact, and is so regarded in law.

But in addition to this, Samuel Cleland swears that he has known Dr. Parkman since 1839, and that he saw him last on Friday, the 23d Nov., between 3 $\frac{1}{4}$ and 3 $\frac{1}{2}$ o'clock p. m., between Milk and Franklin streets; he ascertains the time from its connection with facts and circumstances which can not mislead him. This is also positive testimony.

Mrs. Rhodes had known Dr. Parkman 25 years, attended the same church that he attended. She saw the Dr. the last time on the 23d of Nov., at a quarter before 5 p. m., on the corner of Green and Lyman streets. She can recollect other facts which makes her certain as to time; she passed very near the Dr., and they bowed in passing. She was accompanied by her daughter, who concurs with her mother as to the time, and the identification of the Doctor.

Sarah Greenough, another witness, saw Dr. Parkman between Belknap and South Russell streets in Cambridge street, at ten minutes before 3 o'clock, on the 23d Nov., 1849.

Here then are five witnesses, all testifying positively to the fact that Dr. Parkman was outside of the Medical College after 2 o'clock p. m. on the 23d Nov. They saw him at different times, and in four different places. They saw him in motion; they observed not only his person but his gait in walking. This fact then is supported by a larger amount of testimony than is usually adduced to prove any fact, by living witnesses. It will be remembered that after 2 o'clock p. m., no witness has testified that Dr. Parkman was elsewhere than in the places where these witnesses testify they saw him. Then does not the party who attempts to show that he was in the Medical College during all this time, undertake an alibi, and to prove it not by positive evidence of the fact, but from inferences drawn from other facts—an inferential alibi. If any one of these five witnesses testified truly, the proposition is made out that Dr. Parkman was outside of the walls of the Medical College, in life, after two o'clock p. m., on the 23d Nov., 1849, and if he were, the prosecution has not made out a case for the conviction of the accused.

But this conclusion, so established by testimony, is denied, and evidence is brought to contradict it. Let us examine the evidence.

The mutilated remains of a human being are found in the apartments of the chemical professor, on the 30th of November, six days after Dr. Parkman was seen alive in Boston. These are alleged to be the remains of Dr. Parkman. If they are, that fact alone does not controvert the testimony that he was alive in the streets of Boston in the afternoon of November 23d, after 2 o'clock p. m. No: but it is the first link in a chain of testimony designed to show that he never left the Medical College after 2 o'clock p. m., on the 23d November, and has been murdered in that college. If this first link in the chain is not fully formed and established, then no matter what other links there are, they have nothing to hang upon; or, to drop the figure, if these are not the remains, then all the evidence as to the indebtedness of Dr. Webster to Dr. Parkman, and the securities given for that indebtedness, and the fact that these securities are now in the hands of Dr. Webster, must be thrown out of the case. By no logical connection whatever can these facts show that Dr. Parkman was murdered, because it must be first shown by other proof that he is dead; and this fact, in the present instance, can only be shown by proving that the lifeless remains found are identified as parts of his body. The identity of the remains then is the fact to be established, in the first instance.

The witnesses who testify to the identity can not properly have their recollection refreshed by the fact that Dr. Parkman is dead, for such death is the fact which the identity alone can establish. These witnesses must draw their conclusion from the inspection of the remains themselves, and nothing else. Any other course of reasoning and proof is illogical, unsound, absurd. The human head belonging to the remains is gone, and no person seeing them has testified that they are parts of Dr. Parkman's body from any marks, or conformation to that body. But a block of mineral teeth, made for the human mouth, was found in a furnace, in the apartment of Dr. Webster, together with some fragments of bones, ascertained by scien-

tific inspection to belong to what was once a human head. This block of teeth, it is testified by the dentist, who says he made them, were made for Dr. Parkman, and fitted to his mouth in the year 1846. The same teeth were recognized by the assistant of the dentist, as those made for Dr. Parkman. There were marks and peculiarities about the teeth which enabled these witnesses to identify them, although they had been worn three years, and subjected to the action of heat sufficiently intense to burn up a human head. Now let it be remembered that the judgment of Dr. Keep, the dentist, on these teeth, was formed after he had been informed that the artificial teeth of Dr. Parkman had been found in Dr. Webster's laboratory. This testimony must prove that the teeth did belong to Dr. Parkman, and in the establishment of this fact, must on the theory of the prosecution, overthrow the whole body of testimony, that he was seen alive outside of the Medical College after 3 o'clock p. m., on the 23d November 1849. Is it strong enough for this purpose? If it is not, then, confessedly, Dr. Webster is not proved to be the murderer of Dr. Parkman.

Dr. Keep swears positively to the teeth. Suppose Dr. Keep could swear positively that he saw Dr. Parkman on the 23d November 1849, at 1 o'clock p. m. Dr. Keep does not swear to this fact, but five other persons do, with as much confidence as Dr. Keep swears.

It resolves itself into this—which is more likely to be mistaken, the two dentists who testify to the identity of the teeth after having seen them three years ago, or the five witnesses who testify to the identity of the living and moving man whom they saw five months ago? The teeth, it is said, had peculiar marks—had not also the man strong peculiarities, such as would leave a deep impression upon the memory of every man who know him? His picture does him great injustice if he had.

If in thus considering the question—was Dr. Parkman seen after two o'clock, p. m., on the 23d Nov. the jury had believed at least one of the five witnesses who testified to having seen him, there would have been an end of the case, by a verdict of not guilty. By the course of argument here suggested, the argument in favor of the identity of the remains would have had to perform the office of overthrowing a position established by clear, strong, cumulative evidence. So strong was this evidence that the counsel for the prosecution felt the necessity of attempting to show that on the 23d Nov. a person had been seen moving about from place to place in Boston, who bore so striking a resemblance to Dr. Parkman, as to be mistaken for him, by not less than five witnesses. The testimony so offered was ruled out by the Court.

The result of this view of the case is, that the jury did not give due consideration and weight to the testimony in support of the great fact on which the defence rested. What was the cause of this omission? I answer unhesitatingly, the charge of the Court, and I submit with great respect, yet with undoubting confidence, that this charge misled the jury.

The Court treated lightly the evidence adduced to prove that Dr. Parkman was seen after he entered the Medical College. If the Court pursued this course because testimony as to the identity of human beings derived from eye-sight and observation is not of itself testimony entitled to much consideration, then I beg leave to dissent wholly and entirely from the opinion of the Court. Nine-tenths of the whole community will dissent from it.

The charge says—"Has it been proved that he [Dr. Parkman] was seen any where after the hour he is said to have entered the College? As to the testimony of Mrs. Hatch, Mr. Thompson, Mr. Wentworth, Mrs. Cleland, Mrs. Rhodes and daughter, I need not comment upon them particularly."