

tive for a mortal blow, or one intended to produce death, so as to make it manslaughter where there is an intention to kill. If there is sufficient provocation, it is manslaughter, but words are not a sufficient provocation. [The chief justice read some authorities from East's Crown Laws.] Malice is implied from any deliberate, cruel act against another, however sudden. When there is a blow of a deadly or dangerous weapon, with intent to do some great bodily harm, and death ensues, malice is presumed. If a man provoked by a blow, with a feeling of resentment returns it, and kills his aggressor, it is not excusable, but it is a less crime than murder; it is manslaughter with heat of blood. We see no evidence in this case of any provocation or heat of blood. There were angry feelings, but they do not amount to a provocation or a heat of blood sufficient to render the crime manslaughter.

The purpose of a coroner's inquest is to find how the dead body came to its death. There is no distinction, in the eye of the law, between persons, whether it be a colored pauper in a country almshouse, or the most distinguished member of the community. The same machinery of further proceedings, in case the jury find that violence was used by some party to produce the death. In this case a charge was made against an individual of having, in some way or other, produced death. No one saw it done. The evidence is altogether circumstantial, yet it may be sufficient to produce a reasonable conviction. Crimes are secret. There is a necessity of circumstantial evidence, otherwise we could not protect ourselves from crime. Each sort of evidence has its advantages. There is no common standard of comparison. We may often arrive at as sure a conviction by circumstantial as by positive evidence. The inference from the facts should be a natural or a necessary one, and each fact should be proved by itself. Suppose in the present case the teeth are found to be those made for Dr. Parkman before his death; that fact is itself sufficient to establish the conclusion that the remains are his, if no other facts are found repugnant to this. The allegation is that he entered the Medical College about two o'clock, and never came out of it alive. Search was made during the week. The next Friday, human remains were found under the Medical College. The place was taken possession of by the police. Investigations were made, and the remains were declared to be those of Dr. Parkman. Is this proved? It is proved that he disappeared from his home on Friday forenoon, and did not come back to dinner, and never came back—this is established. Has it been proved that he 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, Mr. Cleland, Mrs. Rhodes and her daughter, and Mrs.

Greenough, I need not comment particularly. It is to be compared with the proof on the other side. When such a great event happens, the whole community is thrown into a committee of inquiry, and a large number of lines of inquiry are instituted; a great many persons are found who have seen the object of the search. It became known on Saturday evening that Dr. Parkman, a man known to almost every body, had disappeared. The whole community were put upon their recollections, and would it be strange if a great many should remember that they had seen him, and yet have been mistaken.

If they had not been mistaken, would not others be found, when all were intent, who would testify that they saw him also? This negative evidence, it is true, is not conclusive in itself, but it goes to destroy the positive evidence, for we can hardly conceive that if there had been no mistake in those who saw him as to his identity or the time, a great many others would not also have seen him, and would not have recollected it the next day. If Dr. Parkman went to the college at the invitation of Dr. Webster, and was there killed by him, all question of implied malice is put out of the question, for it was done by express malice. Dr. Webster admits that Dr. Parkman came there, and, as he says, he

paid him money. It is in evidence that Webster staid there that afternoon, and left there about 6 o'clock. Insomuch as Dr. Parkman has never been seen since that afternoon, if it shall appear that the remains found in the apartments of Dr. Webster were identified as his body, the *alibi* is of no consequence. In a recent case in Richmond, a man was stabbed with a knife; a man was arrested who had a knife in his possession the day before; the handle of the knife was found broken off near the deceased. It was sworn to be that which belonged to the prisoner the day before, and on a *post mortem* examination, a blade was found, which, by the scratched edges of the broken steel, tallied with that of the handle. This circumstance was allowed a great weight. When a circumstance of this kind was established, then the absence of any testimony to the contrary—the proof of concurrent circumstances—has a strong tendency to strengthen the conclusion. When a party has attempted to suppress proofs, the circumstance acts to prove a consciousness of guilt. When we apply these principles to a case, certain rules are to be applied. First, the circumstances upon which the conclusion depends are to be fully proved. Second, all must connect together; no one must be inconsistent with an act of this nature or *alibi*. An *alibi* means elsewhere. If a man is charged with being in one place, and he can prove himself in another at that time, then he must escape. This is a mode of defence which easily suggests itself, and may be secured by a little contrivance. Third, the circumstances must not only limit the guilt of the party, but they must be such as to exclude every other reasonable hypothesis. They must exclude all reasonable doubt. What is a reasonable doubt? It must be more than a probability. The facts must be such as to implicate the defendant also.

We must now, gentlemen, apply these to the present case. The indictment charges J. W. Webster with the murder of Dr. George Parkman, on the 23d of November last. The indictment has been referred to by the defense, and we have taken the matter into consideration. It is the rule of law that the means and manner of the crime shall be set forth, so that the prisoner may prepare for his defense; yet if death is produced in some new mode, the law will not let the criminal escape. It has general rules which provide for new cases. The last count sets forth that the prisoner assaulted and killed George Parkman, in some manner or by some weapon unknown to the jury. The court are of opinion that this is a good count. Dr. Parkman may have been assaulted with chloroform or other, which stupified and made him insensible, and then death would have been caused by the weapons to the jury unknown; and the jury were only bound to set forth all they knew. That is necessary to be proved. First, it is necessary to prove the *corpus delicti*, or the killing, so as to exclude suicide or accident. Dr. Parkman was in good health, as appears by Mr. Shaw, that morning. We come now to the teeth. These are the principal signs of identification. That the other parts of the body did not differ in any material respect from Parkman's, proves little in itself, but becomes very important, if it is made out that the teeth were his.

It is a serious inquiry, whether by the correspondence of the teeth to the mould the identity can be made out. We must rely only on the evidence of those who have made this subject their study. Dr. Keep identified these teeth without hesitation, pronounced them Dr. Parkman's, and he has explained to you the reasons which confirm him in that opinion. You have also heard the testimony of Dr. Noble to the same effect. Dr. Morton is of opinion that the characteristics of teeth are not such as to enable a dentist to identify his work, under such circumstances, with certainty. Three other eminent dentists have been called, who are of a different opinion, and confirm Dr. Keep. This evidence is, undoubtedly, to be received with care. It is of the same nature of that which is applied to fossil remains, and by means of which a single bone is made to lead to the discovery of an entire animal, of an extinct species. You must be judge of