

[Concluded.]

Mr. George Dunning was standing on the evening of the 21st of April, with Mr. Bradshaw and others, talking over their little affairs, in Sarah Ann street, about 20 feet from the residence of Mrs. Young and near at the mouth of the alley that led to the late residence of Mrs. Upperman. He saw a man come out of the alley, but who he was he could not say. The man did not walk fast as he came up the alley, but after he got out of it, he went off at a very rapid rate; a few moments after the man he heard the cry of murder, and is of opinion that the cry of murder was made before the man came out of the alley, but is not confident.

Cross-examined by Mr. Walsh.—At the time he was standing at the mouth of the alley he was holding conversation with Bradshaw and others, and when the cry of murder was made, it did not interrupt their conversation at all. The night was somewhat dark; there were no lamps in that neighborhood, and cannot recollect any thing about the moon.

Mr. Richardson here referred to the Almanac, and stated to the jury that the moon full on the 20th of April, and the sun set a few minutes before six o'clock.

Mr. Dunning continued on his cross-examination by Mr. Walsh.—Could not say the night was dark. The man who came out of the alley passed within a few feet of him. It was past seven o'clock when he and Bradshaw went to the corner of Sarah Ann street at the alley. Mr. Dunning was further cross-examined by Messrs. Earnest and Walsh, but as it was in substance a repetition of the direct examination, it is omitted. He stated, however, that he did not think it possible for a man to go in or out of the alley whilst he was at the front of it without his seeing him.

Mr. Jacob Smith, a city watchman, deposed that he is stationed between Lexington and Holliday streets. On the night of the 21st of April, he saw a man, and a full description of the supposed murderer was furnished him, and he was requested to be on the look out. At four o'clock the next morning, saw a man in Shrooder street, and on approaching him was satisfied from his appearance and dress that he was the murderer. Smith went up to him and asked him which way he had been and which way he was going. The man made a gruff reply, as if he felt insulted; probably said it is none of your business. Smith followed on at a small distance in the rear, and at last, for the purpose of drawing the man into conversation, he purposely stumbled and exclaimed that he had injured his foot, and asked the man if he knew what was good for corns. The man replied that he did, and furnished him a verbal prescription for a cure, and the man and Smith walked on some distance together. Another watchman now came up—Smith locked his arm in that of the man, who was now ascertained to be Lockert, and said to the watchman, this is the man who killed the woman last night. Lockert said that he was sorry that Mrs. Upperman was murdered, but he did not do it. The axe with which the murder was inflicted was identified by Lockert, and he admitted it to be his. On being asked where he stayed the night before, he replied that it was none of Smith's business. Smith was at the examination by the magistrate. On the right shoulder of Lockert's coat, or just below the shoulder, there was a spot of blood about three inches square, and was a little dry.

Cross-examined by Messrs. Walsh, Ropes and Earnest.—The testimony of the witness did substantially agree. At the examination before the magistrate Lockert was asked if he lived with Mrs. Upperman, and he replied in the affirmative. Then said Smith to him, you killed her. What, said Lockert with affected surprise, is she dead? Yes, replied Smith, and she was dead enough before you left her. The whole of the cross examination is not given, because it is not deemed necessary to do so.

Mr. Batchelor was at the examination of Lockert, and on the shoulder of his coat. He examined it; it was somewhat dry, and had penetrated through the cloth. Lockert said it was paint. At a second examination, when Lockert was reminded of the blood, he seemed to be surprised, and had no recollection concerning it. When asked where he had spent the night, he said he had passed a part of it on board a vessel bound to North Carolina, and the balance of it at Spring Garden. There were many spots on his pantaloons, which were made of black bombazette; but whether they were of blood or water the witness could not decide, as they were covered over with dust, so that their original consistency could not be ascertained. **Cross-examined** by Messrs. Walsh and Earnest; his deposition remained unimpaired. As to the blood on the shoulder, he said there could not be any doubt of its being blood. He had seen much blood in his life time—was in several of the battles of the war of 1812, and had seen enough blood to render him a judge of it. He rubbed the blood on Lockert's coat, and it looked red when ruffled up.

Peter Donnelly, lives about 25 feet from the residence of the late Mrs. Upperman; was in his house at the time the cry of murder was made, but knew nothing that cast any light on the subject.

Mr. Ziegler deposed that no one could get out of the back end of the alley, without passing through his house. Lockert did not pass through it.

Here the testimony closed for the state, and the counsel for the defence called.

Mr. Mordica, a Jew of the tribe of Benjamin, who swore that Lockert was in his yard on the 21st day of April, and that he (Mordica) was painting a hen-coop at the time. Lockert remained there some time talking with him, when Mordica looked up, and saw that he had got some paint on his coat. He told Lockert that he was painted; he replied, it is no matter, it will rub off when it gets dry. Mordica then got a rag and rubbed most of it off, but whether it did or did not lodge on the cloth, he could not say.

Judge Brice.—You say that you was painting a hen-coop, and Lockert got the paint from it. How high was the coop.

Mordica.—About so high, (measuring with his hand about three feet).

Judge Brice.—I wish to know how Lockert could get print on his shoulder from a hen-coop no higher.

Mordica.—I do not know sir. That was Lockert's business.

Cross-examined by Mr. Walsh.—Was not a particular friend of Lockert's—had no interest or feeling in the issue of the trial.

A man named Band, another named Kaulp—Messrs. Jennings, Gandy and Joseph Williams were severally called to the stand in behalf of Lockert, to establish his hitherto good character. None of them knew much about him; they had known him for different periods of time; considered him an inoffensive man, but knew nothing particular about him. It cannot be necessary to report their testimony.

Mrs. Fitzgerald called by the state.—Had lived in the neighborhood of Lockert and Mrs. Upperman, and knew that they frequently quarrelled. Lockert at one time, threatened her (Mrs. Fitzgerald's) life, and for the outrage she had him cast into prison.

Judge Brice.—Did they quarrel oftener than is usual for man and wife to quarrel.

Mr. Walsh.—Such passages and episodes of love and vinegar arc frequent in domestic life, are they not?

Mrs. Fitzgerald.—I do not know about that sir.

Mr. Zeigler recalled, stated that he had not heard any quarrelling between Lockert and Mrs. Upperman, though he lived within a few feet of them.

Mr. Walsh now rose to say, that although he was aware that by express statute of the State of Maryland, no negro, mulatto, or Indian slave, could be a witness in any case where the interests of a white citizen was involved, he hoped that a liberal construction would be put on that statute, and that it would not be construed by its letter. The statute was evidently intended to protect the white against the machinations and depravity of the slave population; and it was not the design of its framers, that it should be so construed as to cut off the benefits that might be derived from it by the whites. If the court would place a liberal construction on it, and such an one as humanity would assuredly dictate, he was prepared and ready to show by the evidence of certain blacks and mulattos, where Lockert was on the night of the murder. The court replied that the construction of the statute had long been settled by the practice of all the courts of the state, and the motion that it supposed Mr. Walsh would make, would not be sustained.

The defence of the prisoner was opened by Joseph Earnest, Esq. junior counsel, who addressed the jury for an hour and upwards, and acquitted himself with an ability that gave an earnest of his future success. It was the second appearance of the gentleman at the bar, and he was at the onset evidently embarrassed when he reflected on the responsibility of the task he had assumed. Becoming inspired, however, as he went on, by the commendable anxiety he felt for the acquittal of his client, he soon cast all embarrassment aside, and ably defended the hoary-headed old reprobate, who was entitled to a halter that was not awarded to his crimes. We have full notes of the speech of Mr. Earnest, and are sorry that we cannot write them out. We could not in justice publish the speech of Mr. Earnest without giving that which was delivered by Mr. Walsh in the close of the defence, and the closing remarks of Mr. Richardson for the state. Our limits forbid our attempting anything of the kind; nor is it usual to report the pleas of counsel at length.

Mr. Walsh, in closing for the defence, spoke upwards of an hour with great power and eloquence. There were passages in his speech that would successfully contrast with the noblest specimens of forensic eloquence. At one time he played so successfully on the passions of the ju-

dence, that several of the by-standers commenced a round of applause—for, which he stands alone unrivalled. This gentleman, always eloquent and chaste, never wastes a word for effect. The whole artillery of his mind is directed to one focus, has but one object in view, and always produces the effect desired. He is an able man; does honor to the office he holds, and at all times subverts the ends of even-handed justice.

At 6 1/2 o'clock the case was given to the jury, and at 10 1/2 o'clock it returned a verdict of guilty of murder in the second degree. It is due to Mr. Ropes, one of the counsel for Lockert, to say, that by a rule of the court, which confines the argument of counsel to two of each side, he had not an opportunity to address the jury.