CHARGE OF CHIEF JUSTICE SHAW.

At half past five, His Honor proceeded to address the Jury. He said that he rose with a sense of the deep responsibility which rested upon the tribunal before which the prisoner had been brought for his trial upon charges which affected his life: but that the long time during which they had given their attention to the case required that he should confine his attention chiefly to a statement of those principles of law which would control their deliberations. That by the laws under which we live, the powers of Government had been distributed in various departments, and that it was the duty of that tribunal, not to make the laws, but to declare them, and assist in their execution.

The statute law of the Commonwealth did not define the crime for which the prisoner stood accused, but only affixed a penalty. But that there was another body of laws which had been adopted at various times, during the colonial, provincial, and state governments as the law of the land. He meant that great magazine of legal rules and principles—the Common Law.

The common law had accurately defined the nature, distinctions, and degrees of homicide—as murder and manslaughter, as justifiable and criminal. That the essence of the crime of murder was malice, either expressed or implied. Upon the nature of malice, His Honor read from memoranda which had been prepared for similar cases, and substantially published in his former charges.

That malice would be implied from the criminal act, unless the prisoner should prove provocation, accident, or other circumstances which would preclude the idea; but that no provocation of words merely, however great, would reduce the crime to manslaughter, where the blow was inteuded to be mortal. Any deliberate cruel act, however sudden, would imply malice.

Where a man under the provocation of a blow, in the moment of resentment and sudden heat, returned it, and killed his aggressor, the crime would be manslaughter; but an assault with a deadly weapon, with an intent to commit bodily harm, would imply malice. The case before the Court, showed that angry feelings had been engendered between the parties; but there was no evidence of a heat of blood amounting to a provocation to reduce the crime to manslaughter.

That the first step, when a person was charged of having committed murder upon another, was to prove the *corpus delicti*—that the person was actually dead; and the second inquiry was, whether he came to death by the hand of another. That this preliminary inquiry was made in the first instance by the Coroner's Jury; and if the facts implicated another, then a more full investigation was had before another tribunal.

In the present case a person had suddenly disappeared from society, and the government had laid before them evidence to show that he died by violence from the hand of the prisoner at the bar. No direct testimony had been produced to charge him with the murder, and the government had been obliged to rely upon circumstantial evidence. But that this was often, if not generally, the case. Crimes were usually committed in secret, and the perpetrators would be seldom brought to justice if direct testimony were alone sufficient to convict the offender.

Each species of evidence had its advantage, and it could hardly be said that one was stronger than the other;—they were entirely different. One depended upon observation and the other upon experience. And in the second kind of evidence, it was necessary that all the facts essential to the inference should be established by the evidence. If the main fact to be proved were to be established—as in this case—by the identification of the teeth, and there were other facts such as stature and form, which corroborated the other fact, the conclusion would depend upon the basis of facts, and they must be proved.

There was a recent case in Richmond street, where a man was stabbed with a knife, and a man was arrested who had a knife in his possession the day before. The handle of the knife corresponded with the broken blade which was found on the person of the deceased. Great weight was allowed to this circumstance in fixing the guilt upon the prisoner. He also referred to a case tried before Lord Eldon, where the wad which accompanied the ball shot from a pistol, corresponded with a piece of paper found on the person of the defendant.

In addition to the physical facts which formed circumstantial evidence, there were others of a moral nature, such as the conduct and declarations of an individual; for it was found by experience that men under given circumstances acted and spoke in a similar manner.

Then again, the absence of all contrary presumption, and explanation on the part of the accused gave corroboration to concurrent circumstances.

There were certain rules which would control the judgment in cases of circumstantial evidence. First, that the facts upon which the conclusion depended should be proved. Secondly, that the facts proved should not only be consistent, but connect with each other. Thirdly, that the facts proved should not only indicate the guilt of the party charged, but they should be inconsistent with any other reasonable hypothesis; and that a reasonable doubt should rest upon something more than a mere probability.

That these rules and principles were to be applied to the present case. The indictment charged that John W. Webster, on the 23d of November last, murdered Dr. George Parkman. That it was the right of the prisoner to have the crime charged set forth with formality and distinctness, that he might prepare for his defence. Yet the law would not allow the criminal to escape if he had caused the death in a new or unusual manner. The law had provided for such cases.

The last count of the indictment set forth that the prisoner had murdered Dr. Parkman in some manner, or by some weapon unknown to the Grand Jury, and the Court were of the opinion that the count was good in law.

But what was necessary to be proved under the indictment? 1. The *corpus delicti* or the killing should be proved, and the idea of suicide or accident justly excluded. It had appeared from the testimony of Mr. Shaw that Dr. Parkman was in good health on the morning of the 23d. And it also appeared that he entered the Medical College about 2 o'clock that day, and was never seen to come out. During that afternoon, and for the week following, search was made until human remains were found in the Medical College, on Friday.

Investigations were made before the coroner's jury, and these remains were declared to be those of Dr. George Parkman. The defendant had been arrested. Was it proved that these were his remains? He disappeared on Friday, and has not since been seen at his home. So much had been established. Had it been proved that he was seen elsewhere after he had entered the Medical College?

If there were overwhelming facts against the *alibi* which had been attempted to be proved, they were not to come to that conclusion. The testimony of those persons who had seen him later that afternoon did not require particular comment. In order to have great weight there should be great exactness of time; and it was to be supposed that persons who had called upon their recollections were liable to be mistaken. Would not others have been found who had seen him? It was said that this suggestion was negative; but that in some cases negative testimony would be of nearly the same weight as positive.

The evidence showed that Friday was the day on which Dr. Webster lectured, and that he had made an appointment with Dr. Parkman to meet him there to receive money. That he remained at the College until six; and if it should appear that the remains found in Dr. Webster's apartment were