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Trial of John R. Buzzell

Lemuel Shaw LL.D.

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T R I A L

OF

JOHN R. BUZZELL,

THE LEADER
OF THE

CONVENT RIOTERS,

FOR

ARSON AND BURGLARY.



Destruction of the Ursuline Convent by Fire.

Committed on the Night of the 11th of August, 1834. By the
DESTRUCTION OF THE CONVENT
on Mount Benedict, in Charlestown, Massachusetts.

Containing the Arguments of Counsel, Judges Charge, &c.

BOSTON:

PUBLISHED BY LEMUEL GULLIVER, 82, STATE STREET.

1834.

Faculty

☆ ONLY ☆

SUPREME JUDICIAL COURT.

PRESENT:

His Honor LEMUEL SHAW, LL. D., *Chief Justice.*

His Honor SAMUEL PUTNAM, LL. D., } *Associate Jus-*
" " MARCUS MORTON, LL. D., } *tices.*

Counsel for the Government,

Hon. JAMES T. AUSTIN, *Attorney General.*

Hon. ASAHEL HUNTINGTON, *District Attorney.*

Counsel for the Prisoners,

Hon. GEORGE F. FARLEY.

Hon. S. H. MANN.

EAST CAMBRIDGE. TUESDAY, DEC. 2, 1834.

At the opening of the Court, the Attorney General stated that the government laboured under a difficulty— which was, the absence of important witnesses. He suggested that their non-appearance was occasioned by a notification threatening with death those who did appear as witnesses against the prisoners.

An animated discussion now took place between the Attorney General, and Counsel for the prisoners ; which terminated in Mr. Austin's moving, that John R. Buzzell be now put on trial.

The clerk now read the indictment, which contained twenty-four counts, and included all the prisoners in its specifications, although each prisoner will be tried separately to give them a better chance of defending themselves.

The indictment alleged, in various forms, that John R. Buzzell, Prescott P. Pond, William Mason, Nathaniel Budd the younger, Marvin Marcy, Sargent Blaisdell,

Aaron Hadley, Benjamin Wilbur, Ephraim G. Holwell, Isaac Parker, Alvah Kelley, Thomas Dillon, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the 11th day of August last, with force and arms, did feloniously and burglariously enter with clubs and bludgeons the dwelling house of Mary Anne Ursula Moffat, otherwise called Mary Edmond Saint George; and steal certain sums of money, break the furniture to pieces, and set fire and burn the dwelling-house of said Moffat, against the peace of the Commonwealth, and contrary to the form of the statute in such case made and provided.

To this indictment the Prisoner pleaded *not guilty*.

The jury were now empannelled. As each juror was confronted with the prisoner, Judge Shaw asked him if he had formed any opinion as to the guilt or innocence of Mr. Buzzell, or any other of the prisoners. And if he had any conscientious scruples against convicting in a capital case. After several challenges the following persons were selected.

Jury.

William Farris, <i>Foreman.</i>	Perry Daniells.
Abner Albee.	Osgood Dane.
Nathan Brooks.	Thomas J. Elliot.
Joseph Bigelow.	Reuben Haynes.
Artemas Cutter.	John Jones.
John Cutting.	William Rice.

The District Attorney now opened the cause on the part of the government in substance as follows :

May it please your Honors and Gentlemen of the Jury,

The crime for which the prisoner at the bar stands indicted, is one of the most aggravated description, viz., *Arson and Burglary*. The first is the malicious and wilful burning of the house or outhouse of another. It is an offence, against that right of habitation, which is acquired by the law of nature as well as by the laws of society. The second is breaking into the house in the night time. It has always been looked upon as a heinous offence; not only because of the abundant terror that it naturally carries with it, but also as it is a forcible

invasion and disturbance of that right of habitation which every individual has.



The Lady Abbess with her Crosier.

The punishment of Arson is death. The punishment of the other was death, until 1805, when there was a slight modification in the statute. He now gave a detailed statement of the burning of the Nunnery. And with respect to John R. Buzzell, the government would be able to prove that he was on the spot at 8 o'clock, on the evening before the fire, acting as a leader, and fomenting a riot, and wielding a club, using abusive language, and refusing to tell his name, but boasted of beating an Irishman. By which circumstance they could prove his identity. The government could prove by an accomplice that he was on the ground, and by another witness, that he was in the house. The jury

would feel the great responsibility of passing upon a case involving human life in its issue. But they had a duty to perform both for the prisoner and society. We are not called here to try the merits of this or that denomination of Christians, whether the Catholic Institution which has been destroyed was a good or a bad one. All sects are viewed in an equal light by the law. And if when a sect becomes unpopular its property is to be destroyed by a mob, none would be safe. It is the duty of every good citizen to set his face against such proceedings.

The Lady Superior sworn. She appeared in the full costume of her order. A full black gown, with a cross hanging from the girdle, a white linen tucker falling over the breast in front, a white bandage tight across the forehead as low as the eye-brows, another bandage passing from the temples under the chin, and a black crape veil falling on the shoulders and below the waist from the crown of the head, and when drawn forward entirely concealing the face.

My name is Mary Anne Ursula Moffat. I was born in Montreal, and entered a convent at Quebec at the age of seventeen. After remaining there twenty years I came to Boston. When nuns take the veil they assume a new name. I have the entire management of the temporal concerns of the institution. Miss Harrison was one of the nuns who conducted the Selectmen of Charlestown over the convent, when they searched for the "mysterious lady," i. e. herself. I am called Mother in the Community, but not Divine Mother; and they do not confess to me, but to the Bishop, or some other priest, once a week. The Virgin Mary is not represented by my office. The nuns in their hours of recreation talk about what they please, but do not talk together after seven P. M. Confessions are only made loud enough to be heard by the priest, who is separated by a wall, with a hole in it to admit the sound through. The Bishop does not pardon; he reads the church prayers to them. We meet together once a week, to tell our small faults to each other, when I advise them what to do. The nuns never kneel to me or the Bishop; they occasionally

ask his benediction. The nuns sleep alone. I know Miss Reed of Charlestown. She was taken into our community out of charity, so as to be able to get her living by keeping school. She had an opportunity of knowing what took place in the Convent, with the exception of the school-room. She was much older than the young ladies in it, and very ignorant. She wanted to join us; and we promised, that if she had strength of mind, constancy, and chastity enough, we might take her in, or send her to some other community. She ran off after staying with us four months, because I would not let her take the white veil. Candidates take the white veil in three months, and the black veil in two years and a quarter. Miss Harrison, called the Mysterious Lady, was deranged two or three days before leaving us. She wanted the doors to be all kept open, kept calling for new instruments, and acting very extravagantly. We endeavoured to calm her, and took great care of her. She left us on the 28th of July, and went to Mr Cutters. From thence Mr Runey carried her in a carriage to Mr Cotting in West Cambridge. On Saturday Mr Cutter said the mob would destroy the Convent if they did not see the nun. I told him that the Bishop's influence over *ten thousand brave Irishmen* might destroy our neighbours. Mr Cutter after this saw Miss Harrison, said he was satisfied, and wrote a piece for the paper. On the night of the fire, Mr Cutter and another person took me forcibly by the arm, and endeavoured to carry me into his house; but I resisted, and would not go in. He said my life was in danger from the mob. Our community was supported from the profits derived from keeping school. The property of the scholars alone amounted to fifty thousand dollars. I had *one thousand dollars* in money myself. We owed nothing for the lands or buildings at Charlestown.

Mary Anne Barber, known in the Convent as Sister Benedict Joseph. This beautiful young lady gave her evidence with great dignity and propriety. Her appearance and dignified deportment attracted the attention of the whole court, and her loveliness made many a poor fellow's

heart ache. I was born in the state of Connecticut, and am twenty-five years old. Have been a nun eight years. On the night of the 11th of August I was awakened between nine and ten o'clock by the Superior, who desired me to dress quickly, and collect the children together, and the young ladies. I tried to tranquillize them. I saw from the window the mob collecting in front of the Convent. They used vulgar language towards the Superior, called for the "figure-head," and said it was made of brass. When they began breaking the windows, they were all in the building. I conducted the young ladies to the summer-house at the bottom of the garden. I was unable to save anything.

Elizabeth Harrison, alias Mary St. John, called the Mysterious Lady. I have belonged to the order of Ursuline Nuns for thirteen years. I taught music in the establishment. Every thing was done to make me comfortable. I had no difficulty with the Superior which induced me to quit; but I was mentally deranged. I should have thought it impossible, if any one had told me I should do what I did. I gave fourteen lessons a day of thirty-five or forty minutes each. My recollection of what took place afterwards is very indistinct. (At this period the witness became sensibly affected, the interrogatories were discontinued, and she left the Court).

The Right Rev. Bishop Benedict Fenwick, I.L.D. I am a native of Maryland. Was formerly President of Georgetown College, D. C. I have been Bishop of Boston since 1825. I went for Miss Harrison, and found her at West Cambridge. She was much excited, and looked very haggard. I wished to lead her home a few days after she returned to the Convent, but she entreated me to let her stay. They took a house near the Convent for me to retire to for the purpose of study, and not to incommode the community in their duties. Part of my library was burnt, consisting of Latin, Greek, French, and English books. I receive confessions as any priest does. Priests and bishops do not marry. We live like the Apostles, of whom we are the successors. The Catholic religion has never prohibited the use of the

bible as a general rule. I should wish every member of the Catholic faith to have one ; but I should be sorry to see children and young persons reading certain parts of it. The Jews of old prohibited their children from reading certain parts of it until they arrived at a certain age.

Warren Draper, Esq. I furnished the *Journal* with the information out of which the article called "Mysterious" was compiled. I am a fireman, and belong to the fire



School House where the Conspirators met previous to the Riot.

department ; was on the ground the night of the fire ; saw them break in the lower windows with clubs. After breaking in the front door, a large number of persons rushed in, and threw the chairs, mirrors, books, &c. out of the windows. Some of them came to the window with a large book, and said, "Here goes the Bible. Set fire to it with a torch."

Thomas Hooper (one of the Charlestown select-men).
 — I arrived when they were in the act of breaking in. I told them that the story about the lady was all false ; that the select-men had examined the premises, and found everything to their satisfaction ; told them that there were fifty children, and a sick lady, besides the other nuns, in the building. One replied, that no female should be injured, but that the *cross* must come down (meaning the cross on the building). They were at this time breaking up the furniture, and several voices cried out, "Now for the torches." The idea of setting fire to a building so extensive, with fifty children in it, sensibly shocked me ; and, to induce them to desist, I told them, that if they contented themselves with what they had

done, they might possibly escape, but that if they brought torches they would certainly be detected. The safety of the children became paramount in my thoughts, and I groped round for the sleeping apartments, and called for the Superior, and was told that the children had all escaped. At that time the mob had possession of the whole building. Finding it impossible to save the building, completely on fire, I returned home.

Hon. Levi Thaxter. In driving by the Convent we saw two men near the gate. They stepped up close to it, which looked suspicious. Judge Fay got out and went up to them. Loud talking soon commenced. One said a great deal about blood shed by the Roman Catholics and about Convents. One of them ordered me to take my horse out of the gate-way as it would be in the way by and by. When the prisoner came into court I was not certain he was the tall man until I heard him speak.

Judge Fay. I saw a man who answers perfectly the description of the prisoner. He said, "I am the man that whipped the Irishman down on the canal." When I heard his voice at the examination it struck me as being the man I had seen.

Peter Rossiter—Belonged to the convent—Buzzell accused him of having beaten a woman, and knocked him down, and beat him after he was down. It was on the Medford road. The witness said—"I did not prostitute him, for fear that he might way-lay me, and take revenge."

Dr. Abraham Thompson. Dressed Rossiter's wounds, his face and breast were wounded. * * * *Miss Saint Henry* [then a member of the community, but since deceased] was laboring under a pulmonary consumption, her death was undoubtedly much hastened by the shock of the attack on the convent, the next day she lay extremely prostrated, the day before the burning she was very cheerful, and visited the music-room, she was carried out of the convent in a state of great terror, and the shock produced a spasm, which, combined with the night air, effected the extreme vessels of the system, through the medium of the nerves.

Col. Elbridge Gerry. Saw from 30 to 45 persons round the gate, after they forced the Convent gate down, some one called them to order, and wanted them to make a ring, and agree upon some plan to attack the building. Another said they had "better wait till another time, and get better organized, as they were but *poorly* organized then." Another swore it should come down that night. A *tall man* then proposed to get some tar barrels, and went off, but in about half an hour he came back in company with four others, bringing with them several *tar* barrels, the tall man brought one barrel. They then brought up a part of the board fence of the Convent lands, the fence wood was laid on the tar barrels, to make a bonfire, to raise an alarm of fire, and collect a greater number of people, there was a steady stream of people coming up with armsfull of the fence to feed the bonfire, I have no doubt that the *tall man* I saw is the prisoner at the bar. I could have selected him out of a crowd of a thousand people, I saw the fire put to the building.

Edward Phelps, was in company with Colonel Gerry, [whose testimony respecting what took place at the gate he confirmed] I took considerable notice of the *tall man*, who proposed to get the tar barrels, he brought one on his shoulder, I was within 6 or 8 feet of him, the prisoner at the bar resembles him, it is my opinion that the prisoner is the man, I think I should recognize him any where else, "I noticed him from his being so tall and very noisy, I marked him out as a leader. I did not assist in the riot, if I did I should not own it, I think a criminal has no right to criminate himself, I should think it rather an improper question to ask a fellow.

Henry Buck [an accomplice, and a State's evidence] I came from Claremont, N. H. last April, lived with Mr. Adams at Winter Hill, I heard that the Convent was to be burnt down over a fortnight before it was, it was soon after the girl left the Convent that I heard it was to be burnt down, some people met down near the Convent, at the school house, in the evening, there were about a dozen present at that meeting, they

talked some about sending round to get *help* to do it then, but they separated without concluding on any thing. They had another meeting four evenings after, when there were about *thirty* persons present.

At the second meeting, the same kind of discourse took place, they agreed to notify all they could to come to the next, I did not see Buzzell at either of those meetings, I'm sure he was not at the first one; he might have been at the second meeting, but I don't know it. Mr. Kelly told them that they had better wait till the *three* weeks were out; but said, if any thing was to be done before, notice should be given, this man was at the second meeting. About a fortnight after that meeting, a barn was burnt, in Cambridgeport, it was on Saturday night, a large mob of people, from that fire, collected round the Convent, but nothing was to be done till Monday night.



The Dog of the Convent.

The next Monday night, I went down alone, about 9, I found a large collection of people there, making considerable noise, Buzzell was there, he had a large club in his hand, and appeared to be at the head of them, he would tell them, every three or four minutes, to give three cheers, some thought there were not men enough there to do it, Buzzell proposed that they should go and tear down an old blacksmith's shop, they did not go; some thought it would be best to build a fire with tar barrels, which would set the bells a going.



Gothic Chapel erected over the Tomb in the Garden.

A crowd followed the engine up, and began to throw stones ; I don't mean the engine-men more than the others. The first lights were brought from the engine ; but they afterwards got candles in the building, and lighted them. When they were breaking in the windows, some one cried out, that the folks were not all out of the house. Two men got into the windows, and one came back to the window, and said there was nobody inside. They then jammed the doors open with pieces of bannisters of the chapel stairs. Nearly forty or fifty then entered ; *I was one of them* ; I assisted in breaking the door in ; I helped to throw the furniture out, and tear down the inside work of the building. Some had pieces of the fence in their hands. I went into different parts of the building ; I picked up a small work box [identified by Miss Barber, one of the nuns] ; I saw a number of desks broken all to pieces ; I saw JOHN R. BUZZELL in different parts of the house ; saw him break down the door ; throw out furniture ; he told the rest to go ahead, and down with the convent ; he had a piece of wood in his hand three feet long, and as big round as my wrist. We found candles in the building, and lighted them by the light they got from the engine ; they took these lights to search the house ; I stood in the house nearly an hour, till the building was set on fire ; they found paper in the convent, and piled it up on the chairs, and in heaps in the middle of the rooms, and set fire to it with the lights ; the fire was applied in four or five places ; I did

not see Buzzell when they were setting the fires; the fires were set in the lower and second stories; the first fire I saw was in the chapel; I saw a number put things in their pockets; saw one fellow take a watch, put it into his pocket, and carry it off; did not see any silver things taken, or money; if they found a door shut, they jammed it open with clubs. After the fire was set in the main building, I saw a fellow take some fire down into another building, next to the road; he carried it in, and was going to set the house on fire; one of the enginemen went to the window, and told him to put it out; when he came out of the window, the engineman demanded his name, and called out to "stop him." The fellow then cried out "help," and Buzzell sung out to the enginemen who were after him, "Let him alone; don't meddle with him." I did not see Buzzell after that; I went right home. I saw Buzzell before he entered the building; I heard him called by name; I spoke to him before he went in; I asked him if there was going to be any more men there; he answered, "The Charlestown people will all come as soon as they see the barrels burning on the hill." A good deal of women's clothing was burnt; I remained in the building as long as it was safe to stay.

Cross-examined—At the first meeting there were about twelve present. They asked a Mr. Cutter, if it was not best to send round, and get help that night. He said, he guessed it was best to wait a spell. He said, he wished the Convent was down; that it hadn't ought to be there; and hoped it would be torn down. The reason I went there was, that I understood there was going to be a mob there; I did not know certain; each agreed to notify all they could the next day, to meet the next night. I told them that I would notify all I could. I agreed that it was necessary that the Convent should be pulled down. The next meeting took place the next night—but stop, let's see—it was not the next—yes, though, it was. I don't recollect what I testified yesterday about it. At the second meeting Mr. Kelly and Mr. Cutter were there; sent me and another to get Mr. Kelly and his hands to come down to the school-house. We told them

they were wanted for something about pulling down the Convent. They said, "We are all up to that." When they came down, they said, "What be ye? ain't Paddies, be ye?" Mr. Kelly is the man now in jail. Some thought they had not better do any thing about it till they had got some thousand men. Mr. Kelly thought they had better wait three weeks, and if they did not let the woman out then, they would liberate her, and pull down the building. If the rest were for pulling it down, I was. It didn't make any odds to me when we did it; I wasn't particular; I was ready any time. I did not see Buzzell at either of those two meetings. I helped to tear down the Convent gate, and kindled the bonfire, broke the windows, threw out a harp; saw Buzzell smashing from one room to another. I was arrested on Wednesday after the riot, and put into the East Cambridge jail, from which I attempted to escape, after I testified before the Grand Jury. I got out of the jail-yard, but was retaken in the meadow, about twenty rods from the jail.

James Legan, Heard the man who got the torch say, he got it from "No 13." I was one of the first who entered. The first outcry was for the "sick nun." They then emptied the drawers and bureaus and put the contents into their pockets and hats. I went in for the purpose of saving property, and saved between *two and three* hundred dollars worth, which I delivered to the Rev. Mr. Byrne.

—*Walter Balfour*, Was in the Convent on the night of the fire. Went to see if he could find any one to tell of, and if he could be of any service. These were his only objects. Thought the engine men were there for a bad purpose.

Mr Mann (one of the prisoners' counsel) occupied four hours in an eloquent and forcible argument. He unfolded the grounds upon which he expected to obtain the acquittal of the prisoners. The statute under which the prisoners have been indicted, was never intended to reach the offence with which they are charged, but was meant to apply only to individuals. The whole transaction came under the provisions of the riot act. It is very dangerous to apply the statute of arson to cases of this

kind. There is a great liability to error, it being so difficult to identify with certainty at night and in a crowd. If the select-men of Charlestown had come forward, and taken the persons at once into custody who were engaged in the riot, there would have been no mistake as to identity. Mr Mann then alluded to the institution which had been burnt. The government had endeavoured to prove that it was a charitable one; he would endeavour to prove that that was not its object. With respect to the Lady Superior, he could not conceive why that lady had been brought into court, except for to make an impression, and produce an effect. Her testimony was of no use at all in the case. And all the female witnesses pretended to have a cold, which they caught on the night of the fire. With proper feelings of respect for the Lady Superior, he would tell the jury that he would call witnesses to impeach the truth of what that lady had said. The prisoner at the bar cannot be convicted without Catholic testimony; we will endeavour to show what that testimony is worth. The learned gentleman then spoke of the testimony of the Irishman Rossiter, and asked the jury if the witness had not perjured himself on the stand, and before them. He said he did not set the dog on the women, that he did not strike, and did not know why Buzzell struck him. We shall prove that he *did set* the dog on the women, and threw one of them down, and struck her. And Buzzell first charged him with this unmanly conduct, and then "showed him how things of this kind were settled in this country." With respect to Logan the Irishman, who testified on Friday, he would leave him to the jury, who witnessed his behaviour on the stand. What could save him if he stood where Buzzell now stands. Would the jury have any doubt of Logan's guilt, if arrested. He now concluded his argument, and called the witnesses for the defence. He said the character of Buck was infamous from his cradle, which he would prove by good witnesses.

Lorenzo Russel. Knew Buck in Dorchester, N. H., two years ago, by the name of William H. Marsh. His reputation was *very bad* indeed. Buck stole a suit of clothes and ten dollars from me.



A Novice.

Samuel Lillis. I knew Buck by the name of *Marsh*. No confidence was placed in him, or in any thing he said.

Miss Rebecca Theresa Reed, the young lady who, according to the Superior, was received out of charity, and eloped from the Convent because she was not allowed to take the white veil. She looked very interesting and handsome. I am an Episcopalian. I lived at the Ursuline Convent nearly six months. I was a choir sister there, that is, a choir *religieuse*. I was eighteen when I went there. Mary Agnes Theresa was my religious name. I had my choice of a name—I was known by it in the convent—Miss Mary Benedict and the Superior were there—the Superior was known by the name of *Ma mère*—there were 12 recluse nuns there. When I lived in Charlestown, before I went into the Convent, Mrs Graham and Mr Payne brought me some books, which I understood were presented to me by the Bishop. When I was in the Convent, it was the practice of the nuns to prostrate themselves before the Bishop.

Abijah Monroe—Was one of the Selectmen of Charlestown—Miss Harrison herself went with us to the tomb—she carried the key—myself and one more went down—we applied the key, but it would not operate—Miss Harrison told me that I might open the door any way I chose—we broke the door—in pulling it, the staple came out—the bolt of the padlock was broken, or probably decomposed by the rust. I was satisfied that the tomb had not been opened for a long time previous, and remarked to Miss Harrison, in reference to the rumor that she had been secreted away, that she had not been imprisoned in the tomb at all events. When we left it, it was put together, so as to look as if shut—the trap door above was replaced. When we left, it presented to the eye the same appearance that it did when we first went into it. It could not have been entered without removing some of the securities of the dead. I was in the road on the night of the riot, from 12 till 3—did not see the prisoner there—I did not do any thing to stop the riot.

Edward Cutter—I live about a quarter of a mile from the Convent, and about the same distance from the school house—I never heard of any meetings at the school-house, till I heard it from Buck, in the Town Hall, in Charlestown—myself and brother are the only brickmakers, of our name, in Charlestown—I am always at home evenings—on Saturday night, August 9, I had a conversation with the Superior—I went to the Convent with my brother to get an interview with Mary John [Miss Harrison, the “Mysterious Lady”]—after we entered the parlor, I told the Superior that I had called to get an interview with Mary John—she replied, that if that was my object for calling, she would not gratify my feelings—she said I might bring on my mob—that she had understood that I had applied to the Selectmen for a mob, and that Mr Runey and myself were to head the mob. I requested her to tell me who had said so—that if she would give me the name of her informant, I would satisfy her it was not true. I assured her that I had called from friendly motives. She said—“You may fetch on your mob, the Bishop has twenty thousand of the vilest Irish, who might pull down your houses over your heads

—and you may read your riot act till your throats are sore, and you cannot quell them—you and Mr Runey, Fitz Cutter, and Mr Kelley will have your houses torn down over your heads [this answer was given by the witness in three different forms.] She steamed away in that style a considerable time, till at last she brought in Miss John, and became quite good natured.

Cross-ex.—I should think what I now state does not differ from the statement that was printed in the Bunker-Hill Aurora. I heard the common report, that the nunnery had got to come down, I told every one that spoke to me about it, to keep away, that I did not believe there was a word of truth in what was said about the convent. * * * On the night of the fire, I went with the Superior to Mr Adams', before that I had been to Mr Runey's to see about the children, and collect them together in my house, then went up to the convent grounds, saw the nuns in a circle in the garden, asked them if they would accept my protection, one spoke up, and said, "Is that you, Mr Cutter," and said they would be glad to have my protection. I told them the children were at my house, they asked me if their lives were in danger, I said yes, I thought they were, I asked where the Superior was, they answered that she had told each one to take care of herself, and had probably gone to take care of herself, I thought they were going to follow me down, but they said, "You had better go down and see after the children, and if we find our lives in danger, we will come down to your house." The next I saw of them they were all in the road, opposite my house, they stopped there, two seemed to stray away, and walked off in another direction, they appeared to be lost, like a couple of silly sheep separated from the flock, we followed them as they crossed the fence, they appeared to be lost, one was about stepping into a cellar, I put my hand upon her shoulder, and discovered, by her voice, that it was the Superior, this is what she meant, I suppose, when she testified that I took her by the shoulder and tried to force her into my house, she said to me, "Mr Cutter, I do not want any of your assistance, and will not enter

your house." She said I had delayed making my statement in the paper on purpose to have the convent attacked by the mob, and that our own houses would be torn down. After Mary John came in, on the Saturday night, the Superior appeared to be perfectly satisfied, and was pleasant and good-natured, and treated me very politely and handsomely; Miss John told me that the Superior had always treated her like a mother, she certainly spoke of the mob before I told her that the institution was in danger; there never was a person, that ever treated me more kindly or better as a neighbor than the Superior did. The only act I ever did that offended her was the taking of Miss John to West Cambridge.— Before the nuns got into any body's house, the Convent was on fire.

John Runey, one of the Selectmen, was at the Convent gate about a quarter before 9, was surprised to see people collected there, said to them, "Young men, the Selectmen have been at the Convent, and they are satisfied; and something is coming out in the papers in the morning that will satisfy the public." They replied, "If the statement coming out was satisfactory, it would be well; but if not, then on Thursday night the Convent must come down." I did not see Buzzell there, there were two or three tall men, did not mark any tall man in particular, I tried to identify some of them, but could not.

James R. Smith, Was at the fire, I'm well acquainted with Buzzell, I saw a tall man very forward among the crowd, I thought it was Buzzell, and was going up to speak to him; but when I got within 6 feet of him, I found that it was not him, he had on a low hat spattered with clay, his dress also spotted with clay, never heard Buzzell called "*Old R!*" I did not see Buzzell at the fire, a week before he had no whiskers.

Azariah Holmes, Boarded with Buzzell, he had no whiskers, brick-makers can't wear whiskers in summer, on account of the clay getting into them, some days before the fire Buzzell took cold, and his voice was so changed by it, that I should not have known him by it,—at 9, I saw him at the kitchen door of Mr.



Buzzell flogging the Irishman who insulted the Ladies.

Kelly's house [his boarding house] I never heard him called "Old R!" until after he was arrested.

Ambrose Edson, Saw Buzzell about every day, my recollection is distinct that he had no whiskers.

Jesse B. Packard, Saw Buzzell every day, had no whiskers at all, never heard him called "Old R!" On the night of the fire, I had been abed, and tried with all my might to go to sleep.

Asa Wetherbee, On the 7th of August asked Buzzell to help me unload some slabs, he said he could not, he was so unwell with a cold, I told him that I would pull his ears, in joke; he answered, "Well, you may pull my ears, but you can't pull my whiskers."

Jesse Templeton, knows Buzzell, saw him the evening before the burning of the Convent, between 8 and 9 o'clock at Mr. Ford's store, about half a mile from the Convent gate, he said he had a bad cold, and as I had a cold too, I proposed to drink some gin and molasses. He then went towards his house, and I towards mine, when I got to my house the bells were

ringing nine.***Saw Buzzell after the Convent was in flames near the gate, he came up and slapped me on the shoulder, saying, "Are you here?" The people generally were in their shirt sleeves, good many had tarpaulin hats on.

James Buzzell, brother of the prisoner, saw his brother setting on the grass before Mr. Kelly's door, after 9 o'clock, discovered by his voice that he had a bad cold, and advised him to go into the house, he had no whiskers.

Asa P. Parker, Went up to the Convent fire with engine No. 4, when we got opposite Kelly's house, Buzzell took hold of the rope next to me, some fellows then started out from the side of the road, with smutted faces, and tarpaulin hats, and laid hold of our rope, to drag the engine up, but we held on, No. 13 from Boston then came up, and the same fellows caught hold of her rope, drove off the boys and others that had hold of it, and ran her up to the Convent, the Captain of No. 13 ordered her to be stopped, but they kept right on. As that engine passed through the gate a very stout tall man, with big whiskers, like false ones, took off his jacket and followed the engine up. Buzzell was standing with Mr. Baisdell when we came to Mr. Kelly's. Buzzell remained with the engine, we wanted him to sing "Jim Crow," but he had a cold and could not, he rested his arm on the brake. I saw the stout man all about there, his face was a little smutted. After the small building was set on fire, I saw this big man and a small one with a blue jacket coming towards us, the little one said, "I set fire to the small building twice, but that—fool of a Charlestown engineer put it out again, but they may do their best now, if they want anything of me let them call at the steam-boat Bangor.

Cross examined. I am pretty positive that his jacket was not on, he was straighter and fuller in the face than Buzzell.

Mr. Farley, one of the counsel for the prisoner, closed on the part of the defence in a brilliant and eloquent argument. He commenced by impressing upon them the necessity of patient investigation in this important case,



and the duty which devolved upon them of dismissing from their mind every feeling of a light or frivolous nature. Peculiarities of character had been drawn out and exhibited during the previous examination of witnesses, and the jury might have occasionally felt amused at circumstances which came under their observation. They were now however to dismiss these things entirely from their minds. To remember that they were not now called upon to decide a question of property, but to declare whether the human being now before them should be cut off from existence; whether his probationary state should be terminated, and whether he should be sent from this world "with all his imperfections on his head."

Mr F. first alluded to the nickname of "*Old R.*" and said, It is only proved that *Old R.* even if that man was Buzzell, still he only agreed to be "on hand on Thursday night;" but we deny that Buzzell was ever called *Old R.* till afterwards. We deny his ever having been there, either at the gate, the bonfire, or the burning of the building. The preponderance of the evidence is, that he was not there. The first witness who attempts to identify him is Mr Thaxter, and on the cross-examination, he went so far as to say that when he first saw the prisoner in the court, he did not think he was the man, till he heard him speak. But what did Buzzell say in the court? Did he use the same words and tones he used on the night of the riot? No, he stands here a prisoner merely, and only repeats the single word *challenge*. But it will be recollected that Buzzell had a cold, proved as far as any fact can be proved, and that his voice was affected by it; and if we believe the witnesses on this point, we must believe that Buzzell is not the man that Mr Thaxter heard at the gate, for when in the Court House, Buzzell spoke in his natural voice, but at the time of the conversation at the gate, Buzzell could not speak in his natural voice. Mr. Farley also disposed of Judge Fay's, Fitz Cutter's, and Mr Burbank's testimony respecting the voice, in the same manner as he turned the effect of Mr Thaxter's. The next point he took up was the boast of "whipping their Irishman," which one of the witnesses qualifies, by saying, "*the or*

three Irishmen." It is testified that the tall man said he had "whipped the Irishman over by the canal," but Buzzell attacked Rossiter on the main road, at a very considerable distance from the canal. There is no doubt that an Irishman was whipped on the canal, there are *twenty* whipped there every year, mostly by their own countrymen, but sometimes by ours. The locating the whipping "by the canal," proves that the tall man did not allude to the beating of Rossiter, but to another Irishman who was beaten.

It is proved also, as far as human testimony can prove it, that Buzzell had no whiskers at that time. No testimony could be even imagined farther than what we have as to Buzzell's having no whiskers; they tell us, that in summer brickmakers cannot well wear whiskers; one says that he threatened, in jest, to "take him by the ears," a day or two before, and that B. replied, "he might take hold of his *ears*, but he could not take hold of his *whiskers*, as he had none." Buzzell has whiskers now, and it is these very whiskers which tends to make Mr Fay identify him with the "tall man." We say there was a man talking with Judge Fay, and that man had whiskers, and therefore that man could not have been the prisoner.

With respect to the supposed nickname, "*Old R.*" Mr Farley advanced the idea, that the words used were "*Old Ayr*," a well known name; and further, that it was never pretended to connect Buzzell with that appellation till after his arrest.

Bennett, the clearest, and fairest, and strongest witness against the prisoner, whom he swears to positively, says he had *large whiskers*. On the other side, Smith equally clear and fair, testifies that he thought this "tall man," taking so active a part was Buzzell, with whom he was well acquainted, till he went up to speak to him, when he discovered that he was mistaken.

To prove that Buzzell was not the tall man, so conspicuous between 8 and 9, and immediately after at the gate, we have Templeton, who was in Lord's store with him, a half a mile from the gate, that to ease his cold he drank molasses and gin; the next we hear of him is



A Scene in the Garden of the Convent.

about a quarter past 9, when his brother finds him sitting on the grass in front of Mr. Kelly's house, where he lives. The brother blames him for so exposing himself with his cold, and advises him to go into the house. Does this agree with the leader of a desperate riot? Both of these witnesses must have *perjured* themselves, or Buzzell could not have been the tall man seen at the Convent gate by Mr. Fay and others.

Mr. Farley then adverted to the statute under which the prisoner had been indicted. He agreed with what his colleague, Mr. Mann, had said the other day as to the Riot Act being more applicable than any other act to such a transaction as the burning of the convent, but still did not mean to question the right of the prosecuting officers to indict under the statute for arson. A

mob, however, ought to be dealt with on the spot by the militia or *posse comitatus*; property would thus be saved, and the individuals engaged in it might be prevented from rushing headlong to destruction. If this was not done, but if, on the contrary, it was sought to punish after the offence had been committed, was there not danger that the innocent might be made to suffer with the guilty? The law made no distinction, could make none, when transactions of this kind were treated as the present had been. If a person went to such an assemblage as the one at Charlestown with the best intentions, and, under the excitement of the moment, countenanced or supported the rioters, he would be as guilty in the eye of the law as if he had been concerned in a conspiracy to effect the outrage. Degrees of guilt might exist, but, under the present form of prosecution, the law could not take cognizance of them. An innocent person might be arrested, and he could not tell his own story; he was only permitted to adduce such evidence as by the rules of law was admissible.

With reference to the rejection of Miss Reed's testimony, Mr Farley remarked that the government witnesses had testified that Miss Harrison was insane, and yet it now turned out that the counsel for the defence were not to call witnesses to rebut this testimony. They (the counsel for the defence) had not objected at the time to the testimony adduced by the government, because they did not consider such testimony improper, but should their omission in this particular prove detrimental to the prisoner, it would be a matter that they would never cease to regret during the remainder of their lives.

After a few further remarks upon this subject, Mr F. proceeded to consider and comment upon the testimony adduced by the Government against the prisoner, and which we have, laid before our readers. He went through it laboriously and minutely, and on the whole made out a very favorable case for the prisoner.

He went very largely into the evidence of *Buck*, contending that that individual, from his notoriously bad character, was unentitled to the slightest credit. *Buck*

testified, he said, under fear of his life. It was his interest to have Buzzell convicted; for having once before testified that Buzzell was concerned in burning the Convent, and having been admitted a State's evidence on these grounds, he was obliged to adhere to his statement, lest he should be considered by the Government as forfeiting his pledge. He could not now do otherwise than persist in criminating Buzzell, or he would convict himself of having told a lie in the first instance. He (Buck) believed that the Government would not consider itself bound to bear him harmless if he did not do this. And in this he was right; for if the Government acted differently justice could not be done; and any rogue might escape by testifying against his accomplices at a primary examination, procuring the Government promise of safety, and afterwards refusing to corroborate his statements on the stand. *Buck*, then, having made previous statements, found himself bound to adhere to them, lest he should be deserted by the Government.— How improbable was his testimony! How was it possible that 30 or 40 men could meet near the school-house, without such an assemblage being observed by the neighbors. The fact was, his testimony had been made up to save himself, and he had implicated those persons whose names were most connected with this transaction. He had said that a Mr Cutter attended the meetings near the school-house, doubtless alluding to Mr Fitz Cutter; and had also stated that Cutter and Kelley said they would notify the people of these meetings, and their object, desiring him (Buck) to do the same. Now Cutter and Kelley were men of respectable standing; was it likely they would thus openly engage in a conspiracy of such magnitude as the burning down of the beautiful building at Mount Benedict, or that they would place themselves at the mercy of a stranger, like Buck, (he had hardly been six weeks in Charlestown) desiring him to notify all persons of their meetings? The thing was absurd.

In alluding to the testimony introduced this morning by the government in favor of Logan, Mr Farley said it amounted to nothing. The evidence given by the wit-

nesses was merely of a negative character. They testified that they had not heard any thing against him. Why a man might have a bad character, and dozens of persons never hear that such was the case. On the contrary, the witnesses for the defence had testified positively that Logan bore a bad character. And they were gardeners; men in his own profession and who knew him well. The Attorney General had considered this objectionable, and had said that two of a trade never agree.— But where, he (Mr F.) would ask, did men go to enquire the character of a man but to the individuals of that man's own profession? Where would they go to learn the character of a merchant but among merchants?— Where the character of a gardener but among gardeners?

Mr F. concluded by alluding to the fact that the prisoner had a wife and children, and an aged father and mother. The life of the most worthless member of the human family, he said, was precious, but the individual at the bar was a man of good character, and his life was valuable to others. If, however, the brother of the prisoner, now present, was to take the news to that prisoner's family that his life would be taken, such must be the case; the consequences of the verdict of the jury the prisoner must suffer; but he (Mr F.) entreated the jury not to come to such a verdict until every reasonable doubt was removed from their mind. He only asked them to do their duty; to do unto the prisoner "even as they would that men should hereafter do unto them."

The Attorney General then rose, and addressed the Jury.

Gentlemen of the Jury—It has at last, after the great length of time spent in this trial, become my duty to address you in this important cause, a cause important to the prisoner, who has forfeited his life to the law and to the country and the people, whose capability for self-government are at issue. The crowd who have filled this court from day to day may look upon this trial as only the trial of John R. Buzzell, but gentlemen, *you* are on your trial before your own consciences, your country, and your God. Much has been said about your having the life of the prisoner in your hands, but this is not true. In our State Courts, there is no such thing as a *capital* trial, properly speaking.— Neither the Court nor the Jury are the instruments of his death. If you say "not guilty," no punishment can be inflicted, but if you find a

verdict of guilty, there is a statute which makes it the duty of another authority to execute, imprison, or pardon altogether, and commute in any manner the sentence in each particular case, upon their own responsibility. When your verdict says a party is guilty, he is only on the road to punishment. * * * The crime is sacrilege, arson, burglary, and murder united, committed with protracted and continued atrocity. Here is a large estate purchased and paid for by three *native* American citizens, on this piece of land a large and extensive pile of buildings are erected, and the ground was laid out with a taste, that any but Vandals would have spared for their very elegance. In one corner, is the last sleeping chamber of the recluse sisterhood, who had secluded themselves in this retreat, under the supposed security of our Bill of Rights.

Here is a community of schoolmistresses, devoting themselves to the instruction of the females of the rising generation, and having sixty children under their care, and forty-seven of whom were in the building at the time of the outrage. Suddenly they are awakened by the yells of the ruffian mob, yells such as startled our ancestors, when the war whoop of the savages broke upon their slumbers. The dying woman faints, the lunatic sinks still deeper into the gloom of insanity, the children fly, and only one remains, one feeble old woman, gathering the strength of the lion from a mother's feelings, remains to save her children from the unbridled licentiousness of the brutal and infuriated mob. Then these intelligent, educated, highminded women, in the stupefaction of their grief, hover together, like sheep in a fold. In the meantime their home is fired, the ornaments of the altar, and the word of God are stolen and destroyed, and, as if nothing was too sacred for destruction, the very tomb containing the last remains of eight of the sisters, is desecrated by the ruthless rioters. One of the fugitives from the mob is killed by the fright acting upon her disease. Is this not murder? What is murder in any case but the taking of life a little before the appointed time? The Commonwealth, the nation, the people are degraded, disgraced by this crime. They cowardly make war on children and women, they sneakingly go up to the building before they dare to commence the attack and quietly inquire if there is a musket in the house, or any one that knows how to use it. The chief magistrate of the town, what is he about all this time. Why he tells the rioters when they have destroyed all the property in the house that they have done enough; and having sore eyes he goes to his home and retires quietly to bed.

Can any sympathy be felt for a man who makes war on women and children? Where will be the pride of your American feelings when you take the stranger to Bunker's heights, and show him the slowly-rising monument, and your hearts beat warmly and your bosoms expand at the recollection of the achievements of your fathers which it is designed to commemorate, yes, where will be the pride of your American feelings when that stranger points to the other monument of ruins that frowns so gloomily on the adjacent eminence? The chills of fifty win-

ters would not send such an ice-bolt through your hearts. In Russia, they enter baths heated to 100 degrees of the thermometer, and then instantly plunge into the Neva; an American once tried this bath, and lost his life by the experiment; and the Convent rioters have prepared at Mt. Benedict precisely such a bath for American feeling. This crime is deserving of the severest punishment ever inflicted on the most flagitious offender, and to you, gentlemen, it is left to decide whether the prisoner was one of the perpetrators, and if you do come to a conclusion differing from mine, I must be content; but, good men and true, stand together and hearken to the evidence.

People who never saw each other before are brought into this court to tell you that John Buzzell is one of the men. This cloud of witnesses never knew that they would be brought together here, nothing brings them here but the fact that they were at the scene. The trifling discrepancies in their testimony are proofs of its validity. No two manuscripts of the reporters sitting here are precisely alike, the minutes of the court differ from mine, all differ in *words*, but all agree in substance. It is truly laid down in the books, "the usual character of human testimony is circumstantial *truth*, under circumstantial *variety*."

In proof of the soundness of this principle, let us refer to the inscription affixed on the Cross, as it is given by the four Evangelists—St Matthew says, "This is Jesus the King of the Jews,"—St Mark says, simply, "The King of the Jews,"—St Luke says, "This is the King of the Jews,"—and St John has it "Jesus of Nazareth, the King of the Jews." Yet, notwithstanding these variations, who ever doubted that there was such an inscription.

The counsel for the prisoner has drawn his scimitar across the neck of every witness for the government; according to him, there is not an honest man in the cause, except the honest Iago at the bar. Yet among these witnesses is your own Judge of Probate, the man who is entrusted with the appointment of guardians to your children, and apporions dowers to your widows.

We are told of the Lady Superior's threat of the 20,000 Irishmen to Mr. Cutter, she undoubtedly did feel unpleasant to Mr. Cutter, he had done an unneighborly act when he assisted to carry away one of her family without letting her know, and after creating the rumor that was published in the paper.

It was natural for her to speak of retaliation, when Mr. Cutter spoke of the mob's tearing down the convent, and if this cause be not settled right, I know not what may happen. But is Mr. Cutter's house pulled down? Have we seen, or do we see any thing of the 20,000 Irishmen? Remember the Superior's deportment on the stand! Her property is destroyed and burnt up, but does she show any heat, zeal, or malignity of heart? Nothing, but the sublime spirit of her religion could have presented her in this court, so mild, so calm, with such resignation, as she displayed on the stand. * * *

The Ursuline Community are known throughout the world, and in history, as taking a part, an important part, in the active business of life,

the instruction of youth; and when Napoleon and other governments suppressed convents in general, the Ursulines were spared, because they did not partake of the objectionable character attributed to the other orders.

The whole crime set forth in the indictment has been proved; and, if the prisoner is guilty at all, he is guilty of the whole crime, and I call upon you, gentlemen, to make no compromise with your oaths in this matter.

We prove, by sixteen distinct positive witnesses, that Buzzell was there. We trace him almost every moment of his time, from twilight till the next morning. As "coming events cast their shadows before," Mr Thaxter heard at Watertown that the Convent was to be burnt down. He goes to Charlestown with Mr Fay, and about 9 o'clock we find them at the Convent gate. Judge Fay and Mr Thaxter tell you they saw Buzzell there, and Cutter says he could not see him, but thought it was his voice that he heard in the conversation at the gate.—Coon afterwards saw Buzzell going up the avenue, Col. Gerry saw him coming down, Phelps says this was about 10, and Littlefield and Hogan saw him at the same time.

Judge Fay swears positively, he looked at him, and asked him his name, and he remembers the voice of the low, dirty fellow, who gave him a vulgar answer, too filthy to be repeated aloud, but which was written down by him, and has been seen by the jury. Is not the voice as effectual a mark of identity as any thing else? Is not the human ear as good an instrument for identifying a man as the eye? Is it not even better? What effect his cold may have had on it, I know not, but on the Thursday following, Mr. Fay heard him talking loudly and angrily, at the examination; his cold must have got well exceeding quick; but even if he had a cold, I appeal to you whether, in fact, a cold does change the real essential character and sound of the voice.

We then find him called upon by his fellows to sing "*To triumpho*" at the accomplishment of their infernal purpose, to sing "*Jim Crow*," to the infamous band of infuriated rioters. We have it, also, from his own witness, that a little before 9 he takes a glass of gin and molasses to ease his cold and qualify him for the business; we soon find him hursting in a violent manner into the crowd around Mr. Fay, and using the filthy language proved to have been used by him. Kelly's house where he was seen by Holmes at 9 is right opposite the Convent gate where Judge Fay saw him.

Again he was not seen during that night, where he ought to have been, in his bed, he was not seen there by his fellow lodger.

The witnesses all agree upon *eight* particulars, he was a stout tall man in shirt sleeves, light pantaloons, tarpaulin hat, clothes spattered with clay like a brickmaker's, was called "*old R.*," and "*whipped an Irishman.*" Osborne swears that a man by the name of Buzzell was also called "*old R.*," and we have in proof that neither of Buzzell's brothers were ever called by that name, bearing consequently a strong inference that the prisoner was. The evidence for the defence only proves that

there was another tall man on the ground ; but Buzzell is not identified simply because he is a tall man, but because he is tall, with broad shoulders, and a sharp nose.

In a capital trial, something very near to perjury will always occur, the prisoner is struggling for his life, with a plank near him, a desperate villain is always at hand to swear him off ; but the tall man, referred to by the prisoner's witnesses, does not answer the description given by Bennett ; he was not dressed like a brickmaker, but had *black* whiskers, with a blue jacket, and having the general appearance of a sailor ; and is it at all strange that there should be a sailor there also ?

The prisoner says, "they know me up there ; I whipped their Irishman, and they'll know *more* of me yet." They knew him from the circumstance that he had beaten their man ; and they were to know him again by what he intended to do that night. The treasury of the Commonwealth is at the disposal of the counsel, to bring witnesses, to prove that any Irishman had been whipped near the canal ; but not one is produced, nor does any one prove that he was any where the night but at the theatre of the crime.

In answer to the question, so confidently asked by the prisoner's counsel, how came the State's evidence at the riot ? the Attorney General replied, with great emphasis, I know how he came there, some one set him on, but in this cause I cannot tell who, my mouth is shut : but I do know who set him, as well as it is possible for any one to know any fact, but there are certain rules of law that confine Buck's evidence to his own agency, and the agency of the individual on trial.

Mr Austin argued at considerable length, in favor of, and demonstrated the policy of admitting the evidence of accomplices in crimes, as being one means of protecting the community, by destroying the confidence of rogues in each other. Buck, he continued, pitches upon the same man, that the sixteen other witnesses fix on, and he is therefore corroborated by all the other witnesses.

You will judge whether Buck can or does tell the truth, from the fact that he has disclosed fully every circumstance in his life that he was permitted to tell, and you find him corroborated by the very witnesses brought here to impeach his character. He gives you the names of all the places in which he has resided, keeping back nothing, and even acknowledges that he changed his name. He has been kept in Boston jail, hand-cuffed, and removed from all communication, and has never heard a word of the story of the other witnesses, and therefore, if he be corroborated by them, they must have drawn their facts from the same source.

It is put to you, gentlemen, that no such meetings were ever held, as were testified to by Buck, but the general notoriety that the Convent was to come down, is a proof that the meeting spoken of by him did take place, they agreed, at their meetings, to give notice to their friends and those they might meet, to assist in pulling down the Convent, the design was published, it was known in Boston and Watertown. There is not one of Kelly's hands put upon the stand, to contradict Buck's state-

ment that they were sent for to join the rioters. Col. Gerry corroborates him about the proposal to postpone the commission of the outrage till Thursday, and the second proposal to procure, and the actual fetching of the tar-barrels.

Mr Austin arrayed all the confirmatory evidence together in one chain, with masterly and invincible effect. All, he continued, confirm every statement of Buck respecting this melancholy plunder, and the conduct of the dastardly villains who dared to pollute and destroy this retreat of women and children. He is confirmed respecting the burning of the Bible, by Mr Draper, who witnessed the impious crime. He is cautious not to tell any more than he knows. Why, if he came here to lie, does he not lie through thick and thin? If the truth does not bind him, why does he not say he saw Buzzell apply the fire to the building? Simply, because he is aware that he might not be corroborated, and might be contradicted.

Not a single fact, testified to by Buck, has been contradicted.—There is one particular circumstance, confirming his truth in a very singular manner: he says he saw a small man carry fire into a small building, to set fire to it, but was driven out by an engineman, with a trumpet in his hand. Now the trumpet is always carried by an officer or an engineer, and one of the defendant's witnesses swears he heard a small man say that had attempted to "set fire to the small building twice, but the d—d fool of an engineman put it out again."

Chief Justice Shaw, now charged the Jury in an able and impartial manner. He explained the statutes under which the prisoner had been indicted.

It was laid down by the Court, that, according to the Statute of 1830, upon the crime of Arson, if no person was *lawfully* in the Convent, when it was set on fire, it did not amount to a capital offence, and was not punishable with death. The Attorney General, in reference to that principle, called the attention of the Court, that Messrs Balfour and Logan, who were in the building when fire was applied, were lawfully there; but the Court were of opinion that they were not there lawfully, in the sense of the statute, though in other senses, their presence there was both lawful and laudible, viz: to afford protection and assistance, if there had been any persons in the Convent requiring it. Upon the point of burglary, it was laid down to be a capital offence to break into a dwelling-house, while there were persons lawfully in it, with a felonious intent, and armed with a dangerous weapon. Nor is it necessary to *prove* the intent, if the party be armed with a weapon competent

to do the mischief, and does it. The court considered the testimony of the Superior, that she was in the Convent, when the rioters made their forcible entry, corroborated by the other witnesses, and they therefore fell within the scope and effect of this principle. The Court did not sustain the proposition advanced by the Attorney General, that the Nuns, being in the summer house, a part of the curtelage of the dwelling-house, they were in the eye of the law, in the dwelling-house.

The jury were instructed that they could acquit or convict the prisoner upon all, or either of the counts in the indictment, on those which are capital, or on those which are only punishable with confinement to hard labor in the State Prison.

The Chief Justice then entered generally upon the evidence of the cause, with the remark that the commission of the crime had been conceded, and the whole case was resolved into a question of identity; and the evidence upon this point he stated to the jury with great impartiality, and abstained scrupulously from all remarks or suggestions calculated in the remotest degree to interfere with the peculiar province of the jury to decide upon its effect and weight against the prisoner. Chief Justice Shaw stated, that if Buzzell was the man identified by the first series of witnesses, yet, after the bonfire, there is no evidence against him but Buck and Logan, who saw him in the Convent with a club in his hand, doing mischief. As Logan's character for truth had been questioned, his Honor instructed the jury to regard principally the *intrinsic* probability of his statement, and its corroboration by the other witnesses, and also the circumstance that he was not contradicted in one fact. A witness may be incompetent from infamy or interest; but a surmise by counsel against a witness ought not to have any bearing on the minds of the jury. It having been incidentally mentioned that stolen plants were once found in Logan's possession, his Honor charged the jury, out of justice to Logan, to disregard absolutely and entirely the remark, if they heard it, as Logan was not allowed to explain that circumstance, although he brought witnesses into court upon very short notice to testify upon that point.

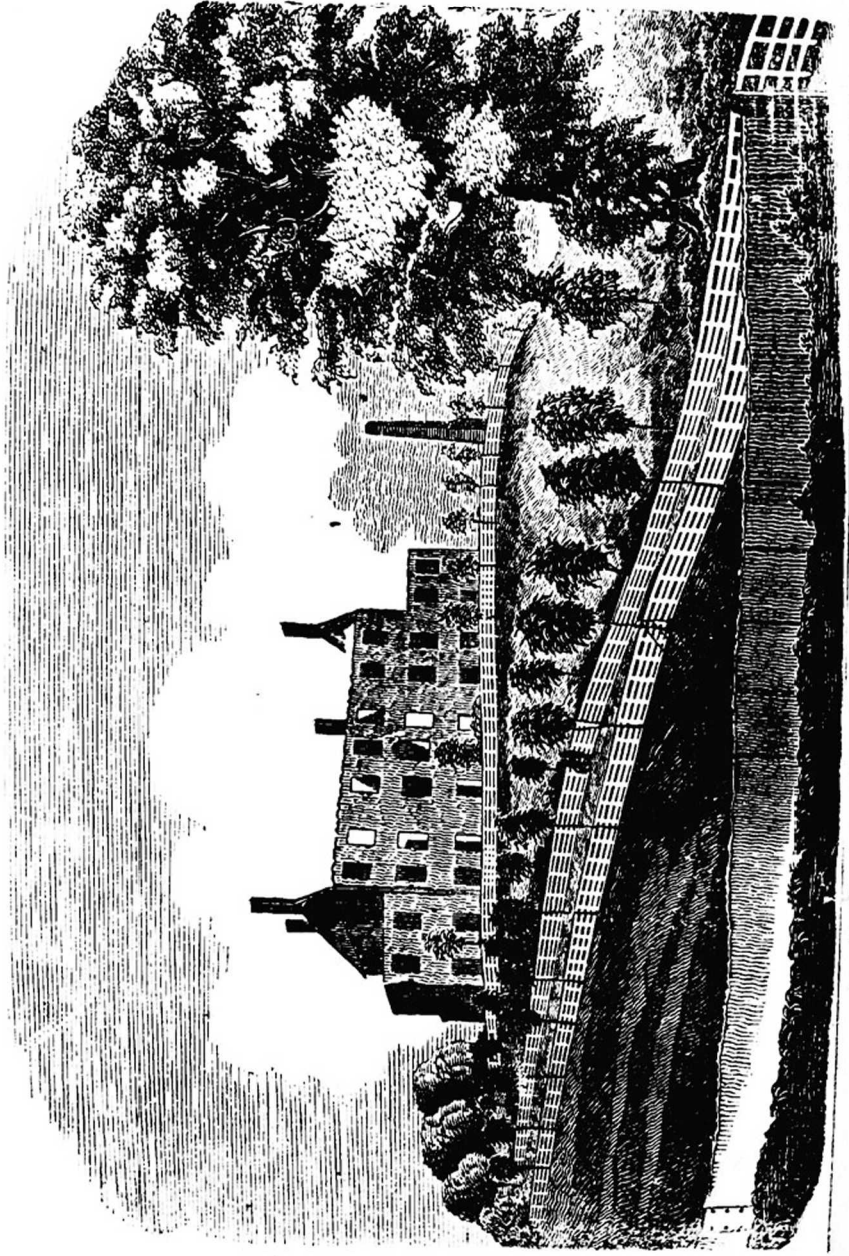
The rule of evidence that prevents him from introducing evidence upon any particular charge, is founded upon common sense principles. A witness ought to have notice, if any such charge is to be brought against him, that he may have an opportunity to bring testimony to rebut it, which would lead us into a host of collateral trials during the pendency of the main one, to the entire obstruction of the regular course of justice. It is contended that the evidence introduced to support Logan's character for truth, against those witnesses who impeach it, is merely *negative*; but when witnesses, knowing a party, swear that they know nothing against his character, though it be negative in form, yet in point of fact, and from the nature of the case, it becomes *affirmative* testimony. The imputation that he was an accomplice, and a participator in the plunder, is also unsupported. He went to the Convent with a good motive, to look after the safety of the women and children, and takes possession of a number of valuable articles to rescue them from destruction.

That this was his design we know from the proof that he sends a message to the priest informing him that he has the property in his possession. His being a Catholic, and a regular member of Mr. Byrne's congregation, precludes the presumption that he was in the Convent for plunder; and, if you believe him in all the material particulars of his testimony, and think he is not mistaken, then the defendant is guilty. With respect to Buck, his honor agreed with the Attorney General, that the tendency of admitting the evidence of accomplices was beneficial to the community, by destroying the confidence in each other which criminals might otherwise feel; and the fact that Buck did not intend to implicate Buzzell in every transaction he witnessed as a corrupt witness might be expected to do. He also adverted to the circumstance that the prisoner made no attempt to prove an alibi; nor does it appear that he was at his home that night.

The *Jury* now retired to agree upon their verdict.

VERDICT.

The *Jury* after an absence of *Twenty Hours* returned into Court with a verdict of *Not Guilty*; which was received with thunders of applause by the audience. Mr. BUZZELL was now discharged from custody and retired from the Court House to the green in front of the building, where he received the congratulations of thousands of his overjoyed fellow-citizens.



Ruins of the Ursuline Convent on Mount Benedict.