

CHAPTER XXIX.

ELEVENTH DAY OF THE TRIAL.

DURING the forenoon of the eleventh day, Andrew J. Jennings Esq., presented the defendant's case as follows: "May it please your honors, Mr. Foreman and gentlemen of the jury,—I want to make a personal allusion before referring directly to the case. One of the victims of the murder charged in this indictment was for many years my client and my personal friend. I had known him since my boyhood. I had known his oldest daughter for the same length of time; and I want to say right here and now, if I manifest more feeling than perhaps you think necessary in making an opening statement for the defence in this case you will ascribe it to that cause. The counsel, Mr. Foreman and gentlemen, does not cease to be a man when he becomes a lawyer. Fact and fiction have furnished many extraordinary examples of crime that have shocked the feelings and staggered the reason of men, but I think no one has ever surpassed in its mystery the case that you are now considering. The brutal character of the wounds is only equalled by the audacity, by the time and the place chosen here; and, Mr. Foreman and gentlemen, it needed but the accusation of the youngest daughter of one of the victims to make this the act, as it would seem to most men, of an insane person or a fiend. I do not propose to go into details about the character of those wounds or the appearance that was presented. I think you have heard sufficiently about that already. But, Mr. Foreman and gentlemen, knowing what they were, the person who is arrested for doing the deed which I have characterized as I have was the youngest daughter of one of the victims themselves. A young woman, thirty-two years of age, up to that time of spotless character and reputation, who had spent her life nearly in that immediate neighborhood, who had moved in and out of that old house for twenty or twenty-one years, living there with her father and with her step-mother and with her sister—this crime that shocked the whole civilized world, Mr. Foreman and gentlemen, seemed from the very first to be laid at her door by those who represented the government

in the investigation of the case. We shall show you that this young woman as I have said had apparently led an honorable, spotless life: she was a member of the church: she was interested in the church matters: she was connected with various organizations for charitable work: she was ever ready to help in any good thing, in any good deed, and yet for some reason or other the government in its investigation seemed to fasten the crime upon her. Now a crime like this naturally awakens at its first result a sort of a selfish fear in men. There is really an outcry of human hearts to have somebody punished for the crime. But, Mr. Foreman and gentlemen, no matter how much you may want somebody punished for the crime, it is the guilty and not the innocent that you want. The law of blood for blood and life for life, Mr. Foreman and gentlemen, even in its most stringent form in the past, never, except in barbarous and uncivilized nations, called for the blood of the innocent in return for the blood or life of the murdered one. Our law—and it is the law that you have sworn to apply to the evidence in this case—presumes every man innocent until he is proved guilty, not guilty until he is proved innocent. I know you may say it is the duty of the State to vindicate the death of one of its citizens. Mr. Foreman and gentlemen, it is a higher duty, and one recognized by the law of this State, that it shall protect the lives of its living citizens. The law of Massachusetts to-day draws about every person accused of this crime or any other the circle of the presumption of his or her innocence, and allows no jurymen or jury to cross it until they have fulfilled the conditions required: until they show that it has been proved beyond a reasonable doubt that he or she is the guilty party, they are not allowed to cross the line and take the life of the party who is accused. The commonwealth here has charged that Lizzie Andrew Borden, in a certain way, at a certain time, killed Andrew Jackson Borden and Abby Durfee Borden with malice aforethought. And that alone is the question that you are to answer: Did she on that day commit that deed? Did she commit it in the way alleged, or to put it in its other form, have they satisfied you beyond a reasonable doubt that she did it? And what is a reasonable doubt? Well, I saw a definition, and it struck me it was a very good one. A reasonable doubt is a doubt for which you can give a reason. If you can conceive of any other hypothesis that will exclude the guilt of this prisoner and make it possible or probable that somebody else might have done this deed, then you have got a reasonable doubt in your mind. Now, Mr. Foreman and gentlemen, I want to say a word about

the kind of evidence. There are two kinds of evidence, direct evidence and circumstantial evidence. Direct evidence is the testimony of persons who have seen, heard or felt the thing or things about which they are testifying. They are telling you something which they have observed or perceived by their senses. For instance, if this was a case of murder by stabbing, and a man should come before you and testify that he saw the prisoner strike the murdered person with a knife, that is direct evidence; that tends directly to connect the prisoner with the crime itself. Circumstantial evidence is entirely different and I want to say right here, Mr. Foreman and gentlemen—I call your attention to it now, and I do not think that the commonwealth will question the statement when I make it—that there is not one particle of direct evidence in this case from beginning to end against Lizzie Andrew Borden. There is not a spot of blood, there is not a weapon that they have connected with her in any way, shape or fashion. They have not had her hand touch it, or her eye see it, or her ear hear it. There is not, I say, a particle of direct testimony in the case connecting her with this crime. It is wholly and absolutely circumstantial. In proving a murder it is necessary for the government to prove that all of the facts existed which to your minds make you morally certain that the murder must have followed from it. In other words, in circumstantial evidence it is simply an opinion on your part, it is simply an inference drawn by you as to the facts that are proved as to whether the essential issue has been proved or not." Here Mr. Jennings cited several cases intended to show how uncertain is circumstantial evidence. Continuing he said: "It is not then, as I said before I started upon this long talk about circumstantial evidence, and I hope you will pardon me, for I think it is very important that you get this point in your mind, it is not for you to unravel the mystery of how he died. It is not for you to withhold your decision until you have satisfied your mind as to how it was done, and just who did it. It is, have they furnished the proof, the proof that the law requires, that Lizzie Andrew Borden did it, and that there is absolutely no opportunity for anybody else. Now, Mr. Foreman and gentlemen, I have taken a little more time than I intended to in discussing the question of circumstantial evidence. I have said that it was necessary for them to prove beyond a reasonable doubt the allegation of the indictment. Circumstantial evidence has often been likened to a chain. These facts which have to be proven in order to allow you to draw the inference

as to her guilt or innocence have been called links in the chain, and every essential fact, Mr. Foreman and gentlemen, every essential fact in that chain must be proved beyond a reasonable doubt—every one of them. You cannot have it tied together with weak links and strong links. You cannot have certain facts in there which you believe and tie them to some other facts of which you have a reasonable doubt. You cannot put them together. You must throw aside every fact about which you have any reasonable doubt, and unless with the lines which you have left you can tie this defendant to the body of Andrew J. Borden and Abby Durfee Borden, you must acquit her. That is the law, and that is the law you have sworn to apply to the evidence. Now Mr. Foreman, we contend that with the evidence that has already appeared in this case, and what will be shown to you, there is absolutely no motive whatever for the commission of this crime by this defendant. They have not a scrap of evidence in the case but that which was given by Mrs. Gifford, and you have heard also the evidence of Bridget Sullivan. But it may be said that it is not necessary to prove the motive. Somebody killed them; what motive did somebody else have? We cannot tell, Mr. Foreman and gentlemen. One of these persons that is killed is this girl's own father. And while in direct evidence, where the person was seen to kill, where they have been directly connected with the killing, it is of little or no importance whether a motive is shown or not, (if you kill, the law infers a motive, the law infers a motive there, direct evidence connects you with the crime,) yet, where, Mr. Foreman and gentlemen, you want the motive in order to have it as one of the links in the chain which connects the crime with its defendant, it becomes of tremendous importance. Tremendous importance; and we shall show you, if not already shown that this defendant lived quietly with her father; that the relations between them were the relations that ordinarily exist between parent and daughter. We shall show you by various little things, perhaps, that there was nothing whatever between this father and his daughter that would cause her to do such a wicked, wicked act as this. And I want to say right here, Mr. Foreman and gentlemen, that the government's testimony and claim, so far as I have been able to understand it, is that whoever killed Abby Durfee Borden killed Andrew J. Borden; and even if they furnish you with a motive on her part to kill the step-mother, they have shown you absolutely none to kill the father. Absolutely none; unless they advance what seems to me the ridiculous proposition that she, instead of leaving the house after

killing the mother, waits there an hour or an hour and a half for the express purpose of killing her own father, between whom and herself there is shown not the slightest trouble or disagreement whatsoever. In measuring the question of motive you have got to measure it in this case as applied between the defendant and her father, because, as I understand it, the government claims that whoever killed one killed both. Now as to the weapon, Mr. Foreman and gentlemen, I do not know as it is necessary for me to say much about that. The blood that was shown upon the axes, which was guarded so carefully at first in this case, as shown by the evidence, has disappeared like mist in the morning sun. The claw-headed hatchet that Dr. Dolan was so sure committed the deed at the Fall River hearing, so sure that he could even see the print which the claw head of the hatchet made in the head of Mr. Borden has disappeared from the case. And I would like to remark in passing, Mr. Foreman and gentlemen, that it didn't disappear until after Prof. Wood had testified so absolutely on that, to the counsel for the defense, glorious morning in Fall River, that there was not a particle of blood upon either one of those hatchets, and that they could not be cleaned in any reasonable time from blood if they had been used in killing those persons.

"And Mr. Foreman and gentlemen, I want to call your attention right here that there has not been a living soul put upon the stand here to testify that they saw Andrew J. Borden come down street from his house. From his house to the Union Savings Bank he was actually invisible. Was it any easier for him to be than it would be for somebody escaping from this house if they walked quietly away? But we shall show you, in addition to that, there were other strange people about that house; people who have not been located or identified. We shall show you that the government's claim here about Miss Lizzie's not having been out to the barn is false, and that this—well, if it was not for the tremendous importance, I should be tempted to call it cake-walk of Officer Medley in the barn, exists in his imagination alone. We shall show you by evidence which I think will convince you—as we are not bound to convince you, beyond a reasonable doubt, that people were up and around and in that barn and all over it before Officer Medley opened the door. And I think we shall satisfy you that Miss Lizzie did go out to that barn, as she stated in those conversations, and was out there when this deed was committed, so far as Mr. Borden was concerned. As to the burning of this dress, we shall show you that it did have paint on it, accord-

ing to the statement which was made by Miss Lizzie in the testimony of Alice Russell; that it was made some time in May; that soon after it was made this was got upon it; that the dress was soiled and useless, and that it was burned there right in the broad light of day in the presence of witnesses, with windows open, with the inside door open, with offices on every side of that house. And so, Mr. Foreman and gentlemen, without spending further time, we shall ask you, if you believe this testimony which has been offered or drawn out, rather, from the government witnesses by the cross-examination of the defense, supplemented as it will be by the evidence which I have suggested, we shall ask you to say in view of the presumption in favor of human nature, in view of the feelings which exist between a father and a daughter who stand here, so far as the evidence to-day is concerned, just as every other father and child stood, from the presumption of innocence which the law says you shall consider, from the fact that there is no blood, not a spot upon her hand, her head, her dress or any part of her, no connection with any weapon whatever shown by any direct evidence in this case, with an opportunity for others to do the deed, with herself in the barn when the deed was done, we shall ask you to say, Mr. Foreman and gentlemen, whether the government has satisfied you, beyond a reasonable doubt, that she did kill not only her stepmother, Abby Durfee Borden, but her loved and loving father, Andrew Jackson Borden, on the fourth day of August last."

The first witness for the defense was Sarah R. Hart, of Tiverton, and she said: "I knew Andrew J. Borden by sight, and knew where he lived; I had a sister who lived in the Dr. Kelly house some fifteen years, and I was in the habit of going there frequently; on the day of the murders I passed by Mr. Borden's house with my sister-in-law, Mrs. Manley; it was about 9:50; we passed by the north gate and stopped there to speak to my nephew, who was there in a carriage, and went up to the back of his carriage. While I was there I saw a young man standing in the gateway; it was not Mr. Borden; he was resting his head on his left hand, his elbow being on the gatepost; I was there five minutes and he was there when I went away."

Charles S. Sawyer was then called: "I was in No. 61 Second street, Mr. Rich's shop, when I heard that a man had been stabbed, and I went out on to the street; I saw Mr. Hall and Miss Russell; she was going up on the other side of the street and I went over to talk with her; I walked along with her until I got to the gate of the Borden house, when I turned around and walked away; when I

turned away. I met Officer Allen at Mrs. Churchill's gate; I went back with him and he put me on guard at the side door, after we had been in the house. When I was in there Miss Russell, Mrs. Churchill, Miss Lizzie and Miss Bridget Sullivan were in the kitchen; Miss Lizzie was sitting in a rocking chair and the others seemed to be working over her, fanning her and rubbing her hands; I was close to her all the time; she appeared to be somewhat distressed; I saw no signs of blood on her head, hair, hands, or dress; I cannot tell what kind of a dress she had on, whether it was dark or light; after that I was back and forward in the entry, and when people came I let them in; sometimes I was out on the steps."

Mark Chace testified to having seen a strange man in a buggy in front of the Borden house that forenoon.

Dr. Benjamin J. Handy. "I went by the house on the morning of the murder at 9 and 10:30; saw a medium-sized young man very pale in complexion, with eyes fixed on the sidewalk passing slowly towards the south; he was acting strangely; in consequence of his appearance I turned in my carriage to watch him; he was acting different from any person I ever saw on the street in my life; he was agitated and seemed to be weak; he half stopped at times and then walked on; he seemed to be mentally agitated, by the intensely agitated expression on his face; I think I had seen him before, some other day; there was nobody else on the sidewalk."

John J. Manning, reporter. "I first heard of the Borden murder some time before 11:30; Mr. O'Neil, city editor of the *Fall River Globe*, told me to go up Second street as there had been a stabbing affray there, and I ran most of the way; when I was going there I saw Mr. Cunningham, Bolles and one or two others; I went into the yard and up to the house, and found Mr. Sawyer at the door; he wouldn't allow me to go in, and I sat down on the steps. Dr. Bowen came, but I wasn't allowed to go in; then Officer Doherty and Mr. Wixon came and I was allowed to go in with them; I went into the kitchen and found Miss Borden, Miss Russell and Mrs. Churchill near her, fanning her; went into the sitting room and Dr. Bowen showed me the body of Mr. Borden and described the wounds; then I went up in the guest chamber with Dr. Bowen; my recollection as to this room is that it was not very light; Officer Doherty pulled the bed away so a better view could be obtained of the body; then I went down stairs and into the kitchen, but the people had gone from there; Bridget Sullivan was sitting on the back stairs; I can't say how long I had been in the house; but when I came out I think I

saw Mr. Fleet on the north side of the house; then I went around on the east side, walked along the Kelly fence, walked along a pile of lumber and then came to the barn, where I think there were two or three persons inside; there were other people about the yard, but I don't recall any boys there. Coming out of the barn, Walter Stevens and I went around the house looking for footprints; we tried the cellar door, but found it fast; I never saw Medley there; I got back to the office at 11:50; I remember the story of the publication of Mrs. Reagan's story, and I had an interview with her; I think it was the same night of the publication; in answer to a question from me, she said there was nothing in it; I wanted to know whether it was true or not, and I wanted a negative or affirmative statement."

Thomas F. Hickey, reporter, of the *Fall River Globe*. "As reporter I saw Mrs. Reagan on Friday about the story referred to above; I said: 'I see you're getting yourself in the paper, Mrs. Reagan;' she said: 'Yes, but they have got to take that all back;' I asked her about the quarrel and she said there had been no quarrel; I asked her if she had repeated any of the words of the sisters; asked her if there was any truth in the report, and she said absolutely none." Cross-examined.—"I represent the *Boston Herald*, and the *Boston Globe* published the story. The *Globe* had what is called a 'scoop,' although I understood that morning that the *Herald* had published the story; I went into her room where she was on duty and was alone; I knew her; I was sent by Mr. Billings and was after something to offset the *Globe's* 'scoop.'"

Mrs. Mary R. Holmes, Fall River, wife of Charles J. Holmes. "I know Miss Borden and have known who she was from childhood; she is a member of the church I attend, the Central Congregational; she has been a member five years and has taken part in much of the church work; I was engaged with her in some of the special work of the church; she was on the hospital board with me, but she was engaged in the Chinese work while I was in the Bible class; I am considerably older than she. I was but little acquainted with Mrs. Abbie D. Borden, although she was a member of the same church; I have seen Miss Lizzie Borden and her stepmother at church together; I first heard of the Borden murder at 11:45; I went to the house about 1 o'clock and sat down in the kitchen; someone told me soon after that Lizzie would like to see me; she was in her room and some men were talking with her; I don't think Officer Fleet was there; I think Dr. Bowen came up a few minutes after, and before Officer Fleet came; we locked the door because there were so

many men about that we didn't want them to come in the room. I had a talk with Mrs. Reagan about the quarrel story, and she said, 'Mrs. Holmes, you know it is not so.'"

Charles J. Holmes, Fall River, banker, testified that he had lived in Fall River fifty years; "I know Miss Lizzie Borden; I was present at the hearing on the first day in the Fall River court house; I know about the paper given Mrs. Reagan to sign; it was read to Mrs. Reagan; I heard it read; I have a copy of the original paper in my pocket; I have a copy of the newspaper in which it was published also." Here witness produced a copy of the *Fall River Herald* saying, when he saw it, that he supposed it was a copy of the *Daily News* of that city, but after diligent search the article was found and vouched for by Mr. Jennings. Witness was shown a type written copy of the same, identified it and read it; it was essentially a denial of the story. "It was read to Mrs. Reagan and she said it was true and that she would sign it, if the marshal would allow her; then Mr. Buck and she went down to the marshal's office; then they came back and went into the matron's room, and I don't know personally what happened there; down stairs, after the marshal refused to allow her to sign, I had a part in the altercation which ensued."

Cross-examined—"I heard Mr. Jennings's voice and a reporter whom I think was Mr. Porter; there was a very heated conversation, and I had an idea that he was connected with a Fall River paper; I attended the trial all through as a friend of Miss Borden; I don't think that Mrs. Reagan had ever been summoned as a witness, and the only reference to the taking back of anything was as to what was published in a newspaper; the day was one of a great deal of excitement; I was trying to get a denial from Mrs. Reagan of the story over her own signature, and it had no bearing upon the case then going on in court; it was simply to correct one newspaper story; she never signed it."

John R. Caldwell, reporter, New York. "I reported the trial in Fall River; I recall the date when Mrs. Reagan was asked to sign the paper, and saw it read to her, but was too far off to hear what was said; Mrs. Reagan took the paper to Marshal Hilliard and he said if she signed it, it would be against his orders; then she went out and he ordered me out." Cross-examined—"I don't know that Hilliard said she would say what she had to say in court; there was quite a crowd in the corridors when Mrs. Reagan went down, most of it being reporters; Mr. Percy, another reporter and I were the only ones who went into the office; Mr. Percy is now in Italy."

Mrs. Mary E. Brigham, Fall River. "I know Lizzie Borden, and have known her all my life; we were life-long friends, and attended the same church; I visited her quite frequently; Mrs. Reagan told me one day, after court, when we were in the matron's room, about a quarrel between the sisters; I saw Mr. Buck with a paper in his hand, which he read to her; they both went out, and she came back mad; she said she was willing to sign the papers, but the marshal wouldn't let her; that she would rather leave her place than to stay where she had been lied about; that it was all a lie and there had been no quarrel."

Miss Emma L. Borden, sister of Lizzie Borden. "We have lived in the house we now live in twenty-one years last May; at the time of the murder Lizzie was possessed of property as follows: \$170 in the B. M. C. Duffee Safe Deposit and Trust Co., \$2000 in the Massachusetts National Bank, \$500 in the Union Savings Bank, \$141 in the Fall River Five Cents Savings Bank, two shares of the Fall River National Bank stock, four shares of the Merchants Mfg. Co. stock and five shares of same, another date. My father wore a ring on his finger," said witness, after the property list had been read; "it was given him by Lizzie; she had worn it herself before; he constantly wore it after, and it was buried with him; I have an inventory of the clothes in the closet on the afternoon it was searched, made up about a week ago, from recollection; there were eighteen or nineteen dresses in there; only one belonged to Mrs. Borden; the others were Lizzie's and mine; there were ten dresses there in which blue was a marked color; eight were Lizzie's, two were mine; I was there when the search was going on. Lizzie and I both went to the attic to assist them in opening a trunk; we never made the slightest objection to their searches and told them to come as often as they could and make as thorough searches as they could; the Bedford cord dress was made the first week in May at our home; it was a very cheap dress, twelve and a half or fifteen cents a yard, and about eight or nine yards in it; plainly trimmed; not more than two days were used in making the dress; Lizzie and I assisted, as we always did; the work was done in the guest room where it was always done; the dressmaker made several for us at the same time. The painters began work after the dress was made; Lizzie got some paint on this dress within two weeks after it was made; she got the paint on the front breadth and on the side; that dress was hanging in the front closet on the day I came home; I know because I went in to hang up a dress and found there was no nail. I said, 'You have not

destroyed that old dress yet; why don't you do so?' It was very dirty, badly faded, and I don't remember having seen her use it for some time; it couldn't have been made over because, besides being badly soiled, the material and collar were such as to render it impossible; it was a very long dress, an inch and a half longer than her pink wrapper; the sleeves were full and the waist was a blouse; the back skirt was longer than any other dress except those cut en train. She had no other dress which she could have got on over that dress, because they were too snug; she could not have had it on under the pink wrapper, because it would have shown; the next I saw of the Bedford cord dress was in the kitchen on Saturday, when I heard my sister's voice; I looked around and saw her with the dress on her; she said, 'I'm going to burn this old dress,' and I said, 'I would,' or 'Why don't you,' and turned away; I didn't see her burn the dress; Miss Russell was there at the time. On Monday Miss Russell came to us in the dining room and said she had told Mr. Hanscom a falsehood, and I asked her what that was for; she said he asked her if all the dresses were in the house that were there at the time of the murder, and she had said yes; and then it was decided between us all that she should go and tell Mr. Hanscom she had told a falsehood; my sister said at the time, 'Why didn't you tell him about it; why did you let me do it?' I remember the story about the quarrel between my sister and I; it was told me by you (Mr. Jennings) the morning the story was published; I never had any such conversation



with my sister as was reported; there was never any trouble or quarrel in the matron's room between us while she was there or anything that could be construed into a quarrel; Lizzie never did put up her finger and say anything about giving in; there was no conversation about you (Mr. Jennings) telling her (Lizzie) all."

Mrs. Mary Raymond, dressmaker. "I have done dressmaking for Lizzie Borden at her home; I also worked for Mrs.

W. T. BILLINGS.

Borden; I made some dresses for Lizzie last spring (1892); I went to the house the first week in May and was there three weeks; the Bedford cord dress I made, the first one because she needed it; it took about three weeks and the sisters helped me; it was a light blue dress with a dark figure; it was made with a blouse waist and full skirt; the skirt was longer by half a finger than she had been in the

habit of wearing; it was a cheap cotton dress with little trimming. The painters were painting the house when Lizzie was wearing the dress; she put it on as soon as it was done; I saw the dress after it was 'painted'; the paint was on the front and back; she had an old wrapper which this was to take the place of; she cut some pieces out of the old wrapper while I was there and took it down stairs; she couldn't get that dress on under any other dress."

Hyman Lubinsky was called, and there was a show of interest manifested in the audience. "I am a pedler, and remember the time of the Borden murder, but I did not know where the house was until afterwards; I keep my horse at Gardner's stable; that morning I went by the Borden house in my team, leaving the stable a few minutes after. When I got to the Borden house I saw a lady come out of the barn and walk to the side door steps; she had on a dark colored dress and nothing on her dress; I don't remember whether she went into the house; I was in my team; I know the servant and have delivered her ice cream; I am sure she was not the lady I saw approaching the house." This ended the testimony for the defense and the court adjourned until Monday.