

THE WEEKLY MESSENGER.

Devoted to News--Foreign & Domestic, Literature, Agriculture, Manufacturers, and all other subjects of interest, except Politics.

VOL. II.

PRINTER'S RETREAT, INDIANA, SATURDAY, JUNE 22, 1893.

NO 38.

PRINTED AND PUBLISHED BY
KEEN AND CHILD.

Terms of the "Messenger."

For 52 numbers, in advance, \$2 00
do. paid within the year, 2 50
do. paid at the expiration, 3 00
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Trial of the Rev. Ephraim K. Avery.

SUPREME JUDICIAL COURT
Of the State of Rhode Island and Provi-
dence Plantations, before the Hon. Chief
Justice SAMUEL EDDY, and Judges JON
DURFEE and CHARLES BRAYTON.

(Continued.)

Penelope Burden, (an aged lady).—
I assisted in laying out the body of Sa-
rah M. Cornell, the day she was found
dead, and saw the whole of her per-
son; there were very bad bruises down
her back, and as we turned her over,
we saw the prints of some one's fingers
just above the hips. [The attorney
general here went to the witness and
she placed her hands on his person in
the same form as the marks appeared
on the body.] The marks just faded
(faded) to my fingers as I spread them
on you now; the marks of the thumb
on the lower part of the belly, and of
the fingers opposite on the loins, just
behind, were on both sides, but those
on the right side were the plainest.—
They were very bad marks, and were
"both above and below," (placing her
hands upon her thighs.) Her right
arm was raised up thus, (to the breast)
and the hand twisted round so, (the
palm turned outward from the person)
and was very stiff. My sister, who is
older than me, put her fingers on the
marks upon the belly, and they would
nearly "fay." Her secret appeared
much bruised, and there was a little
blood upon her garment. One of her
knees was very green, the other not so
much so, and the stain of the grass
would scarcely wash out; the marks
on her back so took my attention, that
I did not examine the lower ones. The
cord round the neck had been removed
before we came, but the mark was very
deep.

Cross-examined.—The knees were
so bent, that we used warm water to
get them down; I first formed an opin-
ion that she had been violated, but I
am not forced to tell what my thoughts
are. (Mr. Randolph here made some
particular inquiries, and the venerable
old lady exclaimed, "I never heard no
such questions asked by no person,"
and would not reply.)

11. Ruth Burden.—I assisted the last
witness in laying out the body, and the
marks were such as she described them
—those of the thumbs on the lower
part of the belly have been made on
both sides when the grasp pressed thus
[describing the supposed position of
the hands which made the marks, by
placing her own upon the person who
was requested to stand near her for the
purpose] with the two thumbs pointing
to each other upon the belly above the
groin. There were marks lower down,
**** very dark. Her under gar-
ments were stained with a little blood
and there was also a quantity, another
kind of substance (feces) adhering to
them; the legs were scratched, and the
knees stained green. Witness not cross
examined.

12. Dorcas Ford.—(The feelings of
this respectable lady nearly overpow-
ered her).—I assisted in preparing the
body for interment; there were marks
apparently made thus (describing them
on the person of her husband) and others
which have been described; there
were two below the shoulder blades, of
a yellowish brown color, and others on
the loins which indicated greater vio-
lence. Mrs. — lifted up her hands
and said "Oh! what has been done?"
and I replied, "rash violence!" There

was foath tinged with blood, which had
proceeded from the mouth and nose.

Cross-examined.—I did not say at the
Bristol examination, that the body bore
marks of a violent intercourse; I said
she had been "dreadfully bruised." I
did not say there had been an attempt
at abortion, but you can judge of that
yourselves. The witness was ques-
tioned a long time on these two points,
but she would return no other answer
than that she said "the deceased had
been dreadfully abused," and her life
bruised from her.

13. Susannah Burden, deposed to hav-
ing seen most of the marks before de-
scribed, and to those of feces on the
under clothing.—I have seen this pa-
per (produced) before; it was taken
from Maria Cornell's handbox by John
Durfee's wife, and I carried it down to
the rev. Mr. Fowler's, our pastor; I
knew it by the marks on it; and this
letter (produced) was taken from her
trunk at the same time, to find out
where to direct to her friends.

Cross-examined.—The paper was
found on Saturday afternoon, about 4
o'clock; it was found about half way
down the hand-box, among her clothes,
and I saw a pencil beside it.

14. Thomas Hart, identified the pic-
tures of a comb produced which had been
at some time repaired with a slip of
brass, as those which he had found in
the lot, 23 rods from the stake.

15. Abner Davis.—On the 20th De-
cember, I was with Benjamin Man-
ches, (No. 2.) blasting rocks about half
a mile from the village of Fall River;
we had blown a rock in which a seam
had been left, which we concluded to
blast again that evening; we charged
it with about a pound of powder, and
having applied the fire, we started to
run down westward; whilst I was run-
ning, I saw a man sitting upon a wall,
about 20 rods from us, with his face
towards the northeast, and when he
saw us he jumped off and walked to-
wards the north. Seeing he was go-
ing directly towards the rock which we
had charged, my partner notified to
me to tell him of the danger; I did so,
and the rock having just then explo-
ded, he shaped his course rather to the
east. This was a few minutes before
sun set, and the light was pretty good;
he had on a surcoat, rather tight, of a
brownish dark color, and a broad
brimmed hat rather tapering at the
crown; I took particular notice of him,
but had not a full view of his face; I
was about ten rods from him when I
called to him. I saw a man exactly
like him at the examination on the eve-
ning of the 20th December, near the
place where the girl was found hang-
ing. I was not told this man was E.
K. Avery until after I had recognized
him walking in the street with others;
his whole appearance, height, hat and
clothing were alike. The string round
the girl's neck was like that around the
bags we had used to sit on when drill-
ing holes in the rock, and a few days
after she was found, we discovered
that one of these bags had been used
and the string taken away. From
what I saw of the man in the lot that
evening, I believe the prisoner to be
the same person. [Mr. Mason objected
to the admission of this opinion as evi-
dence, on the ground that it was not
formed on a recognition of the counte-
nance, but merely on that of the sta-
ture and clothing of the person identi-
fied.]

Cross-examined.—I did not observe
whether the man I saw had spectacles
on, nor whether he had a cane or bun-
dle, but if he had, I suppose I should
have noticed them. I saw him in the
lot about 30 rods from the stake. I
did not state it in the court at Bristol
that he was Mr. Avery, because I was
not asked, but, but I was of the same
opinion then as now. I knew I had
sworn to state the whole truth, but if
it had been you (to Mr. Randolph) or
John Durfee, I should not have said so
unless I had been asked. The bags
were put into a cart, which was about
100 yards from the stake, and judging
from the course he was taking when I
saw him, he would pass within six or
seven rods of the cart; but the bags
were not in it then; we picked them
up and put them there afterwards, with
our tools.

16. Richard Durfee was called by
his son John Durfee when he first
discovered the body, and corroborated
his testimony with regard to its posi-
tion, appearance, &c.

17. William Hamilton.—On the 20th
December, I left the place where I
was at work near Taunton, at half past
seven in the evening of that day, and
on my way home to Fall River, called
at Benjamin Hambley's store to get

something to drink; some persons were
there reading Governor Hines' speech,
and when I rose to come away, some of
them were looking at their watches,
and said it was 17 minutes to 9 o'clock;
as I went on my way home, crossing
the hollow near John Durfee's house,
I heard screeches, and then stifled
groans, as if from a female voice; I
thought it was a woman, and some one
beating her. The sounds seemed to
proceed from the back part of the or-
chard, or in a direction through it; and
I started to get to the rising of the hill
to hear what it might be, but I heard
nothing more.

Cross-examined.—The groans I heard
were in the direction of the stack or
near there. I heard them occasion-
ally three or four minutes.

18. Benjamin Hambley.—I recollect
Hamilton's calling at my store on the
20th December, in the evening; I also
recollect looking at my watch at 20
minutes before 9 o'clock, just as he
left; but I do not remember whether
other persons took out their watches.
I believe my watch was correct, for it
was a good new one which had been
regulated three weeks by a watch mak-
er of Fall River.

Cross-examined.—There was then a-
bout 15 minutes difference between
my time and that of Fall River, as re-
gulated by the factory bells, for Mr.
Gooding, the watch maker, keeps his
regulator ten minutes in advance of
the factory time, and when I called on
him two or three days after the mur-
der, and about three weeks after he
had corrected my watch, I found it had
gained five minutes.

19. Eleanor Owen.—Lives at Tiver-
ton, near Fall River; on the evening
of the 20th December, when at home
in my house, I heard screeches in a
woman's voice; the factory bell was
ringing at the same time, and we had
two cords of wood splitting up, so I told
the boy to open the door to hear more
distinctly, but I did not hear the
screeches again; it was half past seven
o'clock by the bell when I first heard
them.

Cross-examined.—My house is a quar-
ter of a mile from John Durfee's stack
yard; the wind was very high and
blowing in that direction. I mention-
ed that I had heard the screaming the
very next day, when the body had
been found. [This witness, a native
of Wales, spoke imperfect English, and
was not distinctly heard at the report-
er's desk; but in the course of a long
cross-examination, induced by the dis-
crepancy between her statement of
time at which she heard the screams
and that of the witness Hamilton, no-
thing further was elicited.]

SIXTH DAY

Saturday, May 11.

20. Ruth Cook.—Was one of the
women who assisted in preparing the
body for interment, and gave a simi-
lar description of its marks to that of
the preceding female witnesses.

21. William Perce, jr.—I am the
Ferryman at Bristol Ferry; I ferried
Ephraim K. Avery across to Ports-
mouth on the 20th December, about
2 o'clock, P. M. He had on a surcoat
or box coat, of a brownish color, and I
think a black hat; he had not specta-
cles on, and I don't remember that he
had any cane or bundle. I knew him
well. The weather in the forepart of
the day had been rough and bluster-
ing, but it became milder about noon,
and we crossed in the sail-boat; I had
not crossed in the horse-boat that day,
it had been so windy, and that boat
had not been got ready at this time. I
do not remember whether the wind
was rough in the evening, but it was
very cold. I do not remember what
course he took when he landed. I think
he crossed with me at the time of the
four days' meeting, and then wore a
cloak; and once between that meeting
and the 20th December. On these
other days I think he had spectacles
on, but I am not certain; I think I saw
him in a boat on his return the next
morning, but I did not distinguish who
he was.

Cross-examined.—Whilst crossing, he
asked me where the coal mine was,
and I pointed it out, but did not direct
him the best way to get there; I think
he said Oliver Browning had been af-
ter a boat to carry some coal for him.
I think I never saw the prisoner cross
the ferry without his cloak, except on
the 20th December. I would not say
on my oath that he ever before crossed
with me without his spectacles. It did
not blow so fresh on the afternoon of
the 20th December, but that the horse
might have crossed had it been ready;
when landed I saw him mount the

wharf, but did not notice him after
wards.

Direct examination resumed.—The
time at which the prisoner crossed may
possibly vary from the time stated, but
if so, it was rather later than earlier.
Our time at the ferry varies a little
from the Bristol town time, but wheth-
er it is faster or slower, I cannot say.
I carried Mr. Avery over after the
stage from Bristol to Providence, which
crosses between eleven and one, had
passed; he was the only passenger in
the boat at the time, and he paid dou-
ble ferrage for putting the boat off.

22. Jeremiah Gifford.—I keep the
ferry at Bristol; I did not know Mr.
Avery by name when he crossed on
the 20th December, but he crossed
somewhere between two and a half
past two that afternoon, for I saw him
land on the wharf at Portsmouth at
that time. He knocked at my door on
his return at a quarter before ten the
same night, when I was in bed and
asleep. The noise woke me and I got
up; I first went to the front door and
could not see any one; but when I
opened the back door, I saw Mr. Avery
standing in the sink room; he remark-
ed it was cold and blowing very fresh,
but he wanted to cross that night. I
replied it was very late, and he said,
"scarcely so late as you imagine;" but
I said "we'll look at the clock," which
we did, and found it wanted fifteen
minutes of ten o'clock. He requested
me to put him across that night, saying
that brother Warren had informed him
he could cross at any hour; but I said
that the weather was so "tedious" that
I did not think I should go abroad, and
asked where he had been at so late an
hour. He replied that he had been up
the island on business, and had he
known he could not have crossed that
night he should have gone to brother
Cook's, or to brother Ira Cook's, and
slept; and the reason he assigned for
wishing to cross, was that his family
was unwell, and would expect him
home. I said there were physicians
in Bristol if his family needed them,
and wished him to go to bed; he said
he would if I would give him a draught
of water, and having done so he went
to bed. I did not notice any thing pec-
uliar about him, nor did he complain
of being lame or tired. In the morn-
ing I told my son to take him over, and
spoke to him before he went. I recollect
that he had on a brownish surcoat
coat, rather longer than a common box
coat, and a large sized black hat with
a wide brim. To the best of my re-
collection he had no spectacles on either
that morning or the night before.—
My daughter Jane was up, and probab-
ly saw him before he went away.

[The witness proceeded to describe
the relative localities of the ferry and
Howland bridge to certain roads and
foot paths in the neighborhood, which
a stranger or a person well acquainted
might select to arrive at Fall River or
over Howland Ferry bridge.]
Cross-examined.—My conversation
with Avery, could not have occupied
more than three minutes, including my
fetching him the water, for I was in my
shirt only, and it was very cold; I look-
ed at the clock immediately. He did
not say he had been long at the door,
or that he had any difficulty in wak-
ing me. I may have said at Bristol
that he arrived at half past nine. The
coat he had on was like the one he
wears now.

23. William Anthony.—I reside at
Portsmouth, and remember that on the
afternoon of the 30th December, I saw
a person passing between my house and
the pond below, towards the south, I
did not observe his dress very particu-
larly, but I recollect he had on a dark
surcoat coat,—at least I think it was
a surcoat and was a man above the com-
mon height. When I saw him first he
was over the wall, pretty well down
to the pond, about 50 rods from me,
when he came to the open space at the
bars I saw him distinctly. I do not
know the exact time, but I know it was
after dinner, for I had foddered the cat-
tle and was then cutting wood. When
I first saw him I thought it was one of
my neighbors gunning, but when he
came to the bars I saw it was not.

Cross-examined.—Severely as to his
recollection of the day. I was at
Judge Clark's on the 18th, and took a
receipt of him for some wool. On the
19th, I was at Oliver Green on busi-
ness. On the 20th, my child being tak-
en very ill, I went to Dr. Luther's, re-
collect meeting him on my return, and
that I stayed at home during the re-
mainder of the day. The person for
whom I first mistook the prisoner, or
whoever it may have been, was Mr.
Boyd, but he was at Fall River mark-

et at that time, and I knew the stran-
ger was not him, as soon as he came to
the bars.

24. William Carr, on his way home
from Fall River market to Portsmouth
on the 20th December, remembered to
have met a person resembling the pris-
oner in dress and stature, about twenty
rods from city bridge, between
witnesses' house and, about half past
two P. M.

25. Charles Carr, brother of the last
witness, was with him at the time, and
recollects the above circumstance.—
"The man was tall, had on a surcoat
of a dark color, and a handkerchief tied
like a cravat over the chin; I said to
my brother he is rather proud not to
look round to us. I did not know Mr.
Avery at that time; but next day, when
I heard of the murder, I recollect
having met the person I have describ-
ed."

26. William Cranston.—I keep How-
land ferry toll gate, commonly called
the Stone-bridge, and I recollect that
about 3 o'clock P. M. on the 30th De-
cember, a man, looking like a lawyer,
a doctor, or a minister, came up and
said "It is a cold, blustering day." I
invited him into the house, but he de-
clined, and said he was bound to Fall
River. He had the money in his hand
paid me, walked on he was about six
feet high, had on dark clothes, and a
black hat, with rather a broader brim
than this [showing his own.] I did
not observe that he had any bundle or
cane, nor that he had any spectacles
on. I shut the gate about sundown.
There is a way by which passengers
can get round the gate at night, after
it is closed, if they do but know it,
which I call doubling Cape Horn; they
have to get down the wall on the beach,
just where the tide flows, and step up
the other side; and I sometimes took
to see if any people have left tracks of
passing that way. On the following
morning I observed the tracks of a man
who had passed in a direction from
Fall River to the Portsmouth side.—
The place being soft with the tide, the
marks were quite fresh and distinct.
I think I could recognize the man who
crossed the bridge—I saw him in the
court house at Bristol, and that person
I believe was the prisoner, whom I now
see; I never knew him before, nor did
any one point him out to me, but I
knew him pretty quickly after I got
into the court house.

Cross-examined.—I may have testi-
fied at Bristol that I thought he had a
spencer on, for this reason: when he
left the bridge, he took up the tails of
his surcoat upon his arm, so that it
looked like a spencer; but when he
had taken out his handkerchief he let
the tail drop, and I saw it was a sur-
coat coat; it was not a double breast-
ed coat, but one which buttoned up
tight to the neck. I did not point him
out at Bristol, because I did not know
it was my duty to do so, unless I had
been asked. I never said he had pas-
sed over the bridge that day, riding
on the front of the stage. By a juror
I do not remember whether he had an
extra handkerchief round his neck.

28. Robert P. Lee was called to prove
a negative to an anticipated point of
the defence. I left Fall River on the
20th Dec. about 12 o'clock, and got to
Stone bridge about half past one;
left Lawton's tavern at half past two;
crossed the bridge on foot, and went to
Oliver D. Green's, staid there three
quarters of an hour, and went to New-
port, taking the ordinary east road. I
met no person whatever, except Abra-
ham Baker, between the bridge and
Green's; but, afterwards, I met a short
man, named Peleg Aury, who had on
a pea jacket, about three quarters of
an hour before the sun went down, and
no other person. I arrived at New-
port at a quarter past six.

Cross-examined: I was about one
hour and a half walking six miles and
15 rods.

29. Isaac Burdick, deposed that he
had walked from Fall River to the
stone bridge in one hour and ten mi-
nutes, five years ago, on an occasion
that caused him to be in a great hur-
ry to get home.

30. George Lawton.—I keep the
Bridge tavern at Tiverton; it is situ-
ated on the east side of the stone bridge.
I remember to have noticed a man on
the 20th December last, crossing the
bridge on foot in a very fast walk.—
This was at about three o'clock. He
was dressed in dark clothes, a surcoat
coat, and a broad brim'd hat. I not-
iced him particularly, because he seem-
ed lightly clad for the weather, and I
thought he was walking fast to keep
himself warm. I was called to attend
the examination at Bristol, and arrived