

AMERICA.

UNITED STATES.

MYSTERIOUS CIRCUMSTANCE.—Considerable excitement has been created in the city by the following act of daring villainy, the motives for which are still enveloped in mystery. About half past 11 o'clock on the night of the 16th inst. a respectable young lady aged 18 years, was returning down Pearl-street from Broadway from a party, with her parents and some other friends; the young lady had got in advance of her companions about one hundred yards; when, within a few paces of the corner of Elm and Pearl, a man started from behind a large cask, threw a rope around or over her head, and immediately fled, while some person at the other end of the rope commenced hauling it with rapidity towards Elm-street. The young lady was dragged along some paces; but for fortunately her bonnet, below which the rope had not passed, was dragged off, and her friends and several others alarmed by her shrieks, rushed to the spot—the ruffians of course fled. The young lady swooned away from exhaustion and excitement. The rope was found attached by a noose to the bonnet, and her reticule, which she had dropped in throwing up her hands to protect her neck from the rope, was found at some distance, from where the assault was made. All this was the work of an instant, and had the noose got round her throat, a very few moments would in all probability, have sufficed to strangle her.

The person who first found the bonnet did not mention that a rope was attached to it, and a gentleman who advanced towards him, observed him coining up this rope hastily; the gentleman asked for the rope that it might be left in Mr. Knapp's store until next morning; and the other expressed an intention to leave it elsewhere. The rope however was taken, and is in the Police Office; it is about 20 or 25 yards in length, and has on each end a large running noose.

When we couple this circumstance with the facts that within the last two or three weeks two young females have been missed and not yet heard from; and that yesterday information was communicated that two other persons, one a man named Moffat, the other a lad named Harrison, are also absent from their friends, who know not where they are, the subject is calculated to excite alarm, and should be strictly investigated. [Courier and Enq.]

Jan. 19.

The transactions in Flour have been extensive for the last ten days at increasing prices.

The advance on Monday was followed by a still further rise yesterday, and sales were made of the common brands at \$6.62 and \$6.73. Most of the holders however declined selling under \$7, and many will not name a price until further advices from Europe are received. Letters from Gibraltar say, that Malta had been swept of Flour to supply the Ionian Islands.

BOSTON, Jan. 19.

THE SOLAR ECLIPSE OF FEBRUARY NEXT.
The American Almanac just published, contains a great variety of calculations relative to the great solar eclipse which will be visible throughout the United States on the 12th February next. These calculations exhibit very minutely the path of the central eclipse, and of several of the digits, and the phases of the eclipse at a large number of places in the United States, attached to the Almanac for that purpose. The central eclipse will enter the United States from Mexico, and will pass through the State of Louisiana, Mississippi, and Alabama, the north part of Georgia and South Carolina, and the south-eastern parts of Virginia and Maryland—thence proceeding along the Atlantic at a distance of 50 or 60 miles from Long Island, it will pass through the south-eastern part of the Island of Nantucket, and thence to Halifax in Nova Scotia. The unobscured part of the sun will present an annular appearance at all places within 85 miles on each side of this track, and the ring will become more or less uniform in proportion as the place is nearer the central track. The duration of the annular eclipse in places where it is central, will be a little over two minutes. The path of the annual eclipse, will extend to the town of Chatham in the county of Barnstable, but to no other part of the continent in the New-England States, and to no part of the middle States except the southern extremity of New-Jersey and Delaware. At Siasconset, in Nantucket, where the eclipse will be central, the ring will be formed at 1h. 25m. 20s. and will be broken at 1h. 29m. 21s. Digits eclipsed 1h. 44m. 42s. Boston Daily Ad.

BRITISH AMERICA.

UPPER CANADA.

The Legislature of Upper Canada assembled on the 7th ult. Archibald Maclean, Esquire, was elected Speaker, and approved of by the Lieutenant-Governor. The following is His Excellency's Speech to both Houses:—

SPEECH.

Honorable Gentlemen—and Gentlemen.
Since the prorogation of the Provincial Parliament, we have had to lament the demise of our late most Gracious Sovereign; an affliction which has spread through the British Empire the deepest sorrow and regret.

In opening this Session, I cannot but draw your attention to the declaration of the King, on his succeeding to the throne of his ancestors. It will be long borne in mind by his faithful and loyal subjects, and will best convey to you his Majesty's resolution to rely upon the advice and the zealous co-operation of Parliament in his anxious endeavours, under the blessing of divine providence, to protect the liberties of the people, and to promote their happiness.

The immediate prospects of the Colony, I am persuaded, you will consider favourable to exertion on the part of the Legislature, in reference to the progress of your commercial intercourse with the parent state, the increasing revenue and the tide of emigration which has recently turned with so much profit and advantage to Upper Canada.

It may be unnecessary to advert to the successful results expected from perfecting the communication between the great lakes; the value of an uninterrupted inland navigation being now fully appreciated. But, I must remark, that the efforts which are directed to accomplish this important object, and to complete the Rideau Canal before the close of the next autumn, suggest the expediency of introducing without delay, such alterations in your system of constructing highways, as will enable the agriculturalists of the more remote townships to participate in the commerce carried on by the population established near the shores of the lakes; and repair in some degree, the public and individual loss sustained by their exclusion from a market, where the demand for the produce of this country far exceeds the supply.

Gentlemen of the House of Assembly.
The usual statement of the Revenue and expenditure, and estimates for the present year, shall be laid before you.

Honorable Gentlemen, and Gentlemen.
You will give your consideration to the Acts which are about to expire.

The Returns and Reports prepared for your examination, clearly point out the effect of the measures which have been adopted to ensure

an active prosecution of Public Works, and to foster the Institutions organized with the sanction of the Legislature: and I trust, that the course pursued with that view, the encouragement and protection afforded to emigrants of every description, and a judicious application of means to improve gradually your internal navigation, cannot fail to accord with the wishes and interests of the People; and greatly to augment a class of Settlers who have been accustomed to love and venerate our Constitution, and whose labor, enterprise and capital, are essentially contributing to advance the prosperity and welfare of the Province.

LABOURING POOR—EMIGRATION—TIMBER TRADE.

We are happy to find by the papers lately received from England that the difficult subject of the poor has been taken up by practical men in the House of Lords. The Marquis of Salisbury and the Duke of Richmond are persons to whom this important enquiry may be safely confided. A committee on the Poor Laws was sitting at the last dates, and the Duke of Richmond had moved that the evidence be printed. We expect with confidence that the result will be the promotion, on a commensurate scale, of our favourite system of Emigration, as the certain means of relieving the temporary pressure of distress among the labouring Poor in different parts of the United Kingdom.

The Public must have read with feelings of sympathy the accounts of the distress in Limerick alone. The sum of it must have been greatly exaggerated—but deep and almost incurable distress there certainly is, and elsewhere. The riots, and the burnings in England have their origin in the distressed situation of portions of the labouring poor. Their very banners declare that they are supposed to exist, with their families, on one shilling and sixpence per week!

The immense field, which these Provinces offer for practical Emigration is now acknowledged at home; and the circumstances alluded to above, cannot but most strongly impress upon the mind the advantages to the Poor themselves, could they by the interference of Government, by Parochial assessment, by the Mortgage of the Poor Rates, by their own exertions, or by any means, be settled in the Canadas during the season of Navigation. With very trifling pecuniary assistance, compared to the benefit obtained, from thirty to fifty thousand labouring paupers might be provided for, prudently and satisfactorily, in these Provinces.

Among the 25,000 Emigrants the *emancipators* of a much larger body, those who remained in these Provinces are in general comfortably established, or have the fairest prospects of being so. Some of them were nearly destitute and had been receiving parochial relief at home. Those who came from Celbridge, though landed upon our shores without capital, would not at this moment return to the country they fled from. We mention these facts to prove, that not even poverty on arrival here is an evil without remedy. It may be got over; and we are ourselves acquainted with several instances where a good house covers the pauper family of 1829.

Those unfortunate persons who through distress are now disturbing the tranquillity of Kent and Hampshire, if removed to these Provinces, would soon be able to maintain themselves in peace and good order. One half of the sum annually levied upon the Counties to defray the expenses of the extraordinary Police, and the Criminal prosecutions, would be fully adequate to the establishment of such a number of Labouring Poor in these Provinces as would materially relieve the local pressure of pauperism at home. At all events some such experiment should be tried; and for the sake of humanity we hope it will be tried in the course of next season. We rejoice that the subject is now before the House of Lords where perhaps more may be effected than in the Lower House.

A great alarm has not unreasonably been excited respecting the Colonial views of the present Ministry.

From the opinions their adherents have long been supposed to entertain, from their unpublished pamphlets, and from their speeches in Parliament, it may be feared that some alteration will be made in the Timber duties, unfavourable to this country. The speeches of Mr. Warburton go directly to annihilate the Canada Timber Trade—but we cannot believe that Ministers will commit an act so suicidal to the prosperity of British and Colonial navigation, as the removal of the protecting duties would undoubtedly prove. Not only in a Commercial view, but as friends to Emigration, we look upon such a change in the Timber trade with dread. It is in these vessels that most of the Emigration reaches this port. It is a profitable freight to the ship-master, it is beneficial to the Province from the expenditure caused on arrival, and it is cheap and convenient to the Emigrant himself.

To Ireland in particular, which has lately become an extensive ship-owning country, any change in the duties will be disastrous. Much of the Irish shipping, we might say, the greatest part is engaged in Colonial Trade. Most of these vessels bring out settlers to the country. Instead of 800 vessels being numbered on arrival in this harbour, we fear the number will be diminished nearly one half, should the measure we deprecate, in common with the Mercantile body, ever be adopted in the Councils of the Nation. The motto of Canada will lose the fine meaning Hitherto attached to it, and become an unmeaning and unintelligible sentence.

Ducit opes animamque ferro.
Quebec Official Gazette.

ROYAL GAZETTE.

FREDERICTON, FEBRUARY 2, 1831.

ALMS HOUSE AND WORK HOUSE.
Commissioner for next week,
JEDEDIAH SLASON, Esq.

Savings Bank.
TRUSTEES NEXT WEEK.
HENRY G. CLOPPER, ESQ.
JAMES TAYLOR, ESQ.
JEDEDIAH SLASON, ESQ.

NOTICE.

THOSE Ladies who have been presented at GOVERNMENT HOUSE, and who may be desirous to be present at the opening of the General Assembly, are requested to send their names to the Clerk of the Council, in order that Cards may be sent to them.—No Children will be admitted.

We are without later advices from Europe.

HILARY TERM.

J. WILLIAM IV.

The Supreme Court commenced its sittings yesterday.

We beg leave strongly to recommend THE SOCIETY FOR PROMOTING CHRISTIAN KNOWLEDGE to the support of our readers in Fredericton and the surrounding parishes. The General Meeting of the Society for this district, which is convened for 12 o'clock to-morrow at the County Court-House, will, we trust, be well attended, and produce a large accession of Subscribers. On perusing the new Rules and Regulations which will then be proposed for adoption, we observe they are so framed, that every Subscriber will enjoy the privilege, should he be disposed to avail himself of it, virtually to receive the full amount of his subscription in the Books or Tracts of the Society at the cost price;—a provision in our opinion, very judiciously adapted to the comparatively indigent state of a new country.

The Society for promoting Christian Knowledge is capable, if adequately supported and well directed, of communicating very great benefits to this Province. In our extensive Parishes and widely-scattered population neither the attendance at places of public worship, nor the personal intercourse of Pastors with their flock, can be so frequent or uniform as the spiritual interests of the people require. But by means of this Society the Holy Scriptures, the excellent Liturgy of the Established Church, with a great variety of Books and Tracts, may be easily circulated in every direction, and some at least of these publications may be made to "do the work of an evangelist," in every family which is but willing to give them admission. The suggestion in the proposed Rules respecting Lending Libraries appears to be particularly worthy of consideration. Such institutions would be an invaluable auxiliary to our parochial schools, and would tend to elevate the intellectual character of the people, at the same time that they would furnish them with the best instruction for the guidance of those powers which it is the province of education to call forth and create.

Our readers are also notified that on the evening of the same day the claims of the British and Foreign Bible Society will be advocated, and we confidently hope, that the like zeal which has hitherto animated the friends of this institution, will not withhold its benevolence, while the spiritual wants of our fellow creatures implore and require its aid.

FIRE AT MIRAMICHI.—We regret to learn that the following property was destroyed by the fire on the evening of the 19th inst. viz:—The house owned and occupied by Mr. John Russell in Chatham where the fire commenced, two stores owned by Mr. Russell and occupied by Mr. Samuel, two stores occupied by C. Clark, Esq. a house and large formerly occupied by J. McDonald, and the slaughter-house owned by J. Keillor. The contents of the buildings were principally saved, and it is satisfactory to state, that the loss will not be so severely felt, as the greater part of the property destroyed was insured.

The following address to the Grand Jury, was delivered by His Honor Judge CHURMAN at the opening of the Circuit Court in St. John, on the 11th ult.

Gentlemen of the Grand Jury,

We are assembled here for the grave and important purpose of administering public justice according to the laws and institutions of the Province.

The body of Law in force in this Province consists of the Common Law of England, such parts of the Statute Law of that Kingdom, as may upon the principles applicable to the subject, be decided by the Provincial Legislature to extend to this Colony, and the Acts of the Provincial Legislature. A system which, if diligently and faithfully administered, is well adapted to secure the enjoyment of all the blessings incident to a state of civil society, and under which the inhabitants of this Province have hitherto lived, and I doubt not will continue to live, loyal and contented.

Notwithstanding however, the general excellence of the English Law, time and experience which are said to be "wiser than all the co-existing wits in the world," have shown that parts of it need reformation and amendment. Accordingly the wisdom of the Mother Country has chosen the season of peace which has now so long prevailed, and which notwithstanding the threatening aspect of the times, I trust is destined to continue, to turn attention to the subject. In doing so she appears to act with care and caution which are inseparable from all wise amendment of established law, lest change of practice should only produce a change and increase of evil. Years of discussion preceded the late extensive revision of her criminal code. Several of the most able and learned men in the profession of the law are now employed upon commissions, expressly instituted for investigating those branches of her civil Jurisprudence, which are thought to need amendment, and they have already made more than one elaborate report, displaying in a signal degree talents and knowledge sedulously applied to the elevated purpose of practical improvement. In this Province we look with peculiar interest to the result of those of the proposed alterations which affect the practice and proceedings of the Courts of Law, because in this respect, our institutions are framed more nearly after the English model, than I believe is the case in any one of the North American Colonies. When Parliament shall have finally acted on this subject, we shall probably find it expedient still to follow in the steps of the Mother Country, and hereby retain the very great advantage we have hitherto enjoyed in having her codes of practice to refer to, as the rule and guide of our proceedings, renovated and matured as it will be by the great powers of intellect and the enlarged experience which she brings into action.

The Provincial Legislature has already adopted some of the late Parliamentary improvements in the Criminal Law, by Acts of Assembly passed in the session of 1829, and I do not doubt will find reason for giving further attention to this most important subject.

The legal institutions of this Province being, as I have already intimated, copied from the Mother Country, the Supreme Court has by

Commission from the King, all the powers and jurisdictions of the three superior Courts of Common Law in Westminster Hall. The terms of this Court are held at the seat of Government.

The Courts of *Nisi Prius* (so called from these two words occurring in the writ enforcing the attendants of Jurors when law proceedings were in Latin) or *Circuit Courts* as they are styled in an Act of Assembly (26 Geo. 3. ch. 8) are emanations of the Supreme Court held before one of the Justices of that Court, in the respective Counties, for the purpose of trying causes in which issues have been joined triable by the County. These *Nisi Prius* or Circuit Courts are held without any Special Commission by virtue of the Provincial Statute, to which I have just alluded. The verdicts of the Juries in the cases tried are returned to the Supreme Court at Fredericton, where all the proceedings at the trial may be reviewed before the four Judges, who consult together, and give judgment upon the verdict, or make such decision, by ordering new trials, or otherwise, as the circumstances of each case may in law and justice appear to require. Deliberation and impartiality, as well as uniformity and consistency, are hereby well provided for in the administration of the law.

The Courts opened here to-day are two-fold. One of them is a Circuit Court, or Court of *Nisi Prius*, such as I have described, in which I sit as a Judge of the Supreme Court to try the causes sent from that Court to be tried by Jury in this city and county at this time.

Another Court has also been opened. It is called a Court of Oyer and Terminer and General Gaol Delivery, and derives its authority from the Commission which has been openly read. In this Province it is the practice to associate in this Commission with the Judges of the Supreme Court, certain of the Magistrates of the respective Counties, and any two of the persons named in the Commission, of whom a Judge of the Supreme Court is from the undivided tenor of the Commissions always to be one, have power to proceed in the execution of it. We are authorised to hear and determine (hence one of the names of the Court *oyer et terminer* in law French) all crimes and misdemeanors whatever, of which a long catalogue is furnished by the Commission. We are enjoined also by the Commission to deliver the Gaol of the prisoners therein being. This Gaol Delivery is effected by the trial of such prisoners as are indicted, and the discharge of those against whom no bills are found.

The Commission directs us to enquire into offences by the oaths of honest and lawful men of the City and County, thus maintaining the great characteristic of the English Common Law, the intervention of the people in the administration of justice in the capacity of Jurors, when matters of fact are in question, and opening the important part which you are to sustain in the proceedings of the day.

The custom of presenting offences by an inquest of twelve men at the least, may be traced to a remote period of English history. In early times there was an inquest for every hundred in the County; the hundreds being subdivisions of counties, originally containing 100 families each, introduced by the great founder of the Laws of England, King Alfred, and retaining the name in England to this day. In process of time a practice began of summoning an inquest of the whole County, in which however the traces of the original institution so far remained as that some of the inquest were to be summoned from every hundred. This was called the *Grand Inquest*, which originally consisted of Knights and was to inquire for the whole body of the County, in contradistinction to the hundred inquests, whose power was confined to their respective districts, and upon the introduction of the practice of returning a Grand Inquest of the County at large, the business of the hundred inquests naturally declined—"until," says a learned historian of the English Law, "at length the whole burthen of presenting and finding the indictments devolved upon the Grand Inquest, and the hundredors continued to be summoned merely for trying issues." This is one of the many instances, where the name of the institution remains unchanged, long after the occasion, which caused the name, and gave it its peculiar propriety, has faded from common view.

Your office, as a Grand Inquest, being that of preferring the legal accusation against offenders, the party charged is not brought before you, and you are to hear witnesses only on the part of the Crown or prosecution. It is a question which has undergone some discussion.—What degree of evidence is necessary to justify the finding of a bill of Indictment by a Grand Jury? Must it be such full and clear evidence as the Jury of trial would acquire, in order finally to convict? Or will a less degree of evidence suffice? Lord Hale, a great and humane Judge, lays it down broadly that "in case there be probable evidence the Grand Jury ought to find the bill, because it is but an accusation and the party is to be put upon his trial afterwards." Sir William Blackstone upon the same point says that "the Grand Jury are only to inquire upon their oaths whether there be sufficient cause to call upon the party to answer. They ought however to be thoroughly persuaded of the truth of an indictment so far as their evidence goes and not to rest satisfied merely with remote probabilities." Lord Coke's opinion is that "Indictments being the foundation of all capital prosecutions, found in the absence of the party accused, it is necessary that the proof of the offence should be substantial." In the consideration of this question it is important to bear in mind that you may in effect acquit an offender by not finding a bill of indictment against him, whereas you never can condemn, because when a Bill is found, the person accused must be heard in his defence and tried by another Jury before he can be convicted. The result of the authorities and the reason of the thing appear to me to be, that you should not on the one hand require such full and undoubted proof of guilt as if you were in the Jury of trial finally pronounced on the case, nor should you, on the other hand, subject a party to the pain and jeopardy of accusation upon mere light and remote probabilities; but whenever you are satisfied in your consciences, upon substantial evidence, that there is just and sufficient cause to put the party accused upon his trial, your duty, and the interests of society require you to find the Bill.

Should the prisoner be convicted on his trial, although in cases of treason and felony there can not be a new trial, yet if, after all, there be any doubtful point in the case, the execution of sentence will be respited, and the question may be brought before the four Judges and fully argued and discussed, and if they should entertain a doubt of the propriety of the conviction, the course is for them to recommend the prisoner for a pardon. Such are the guards which our Law provides against the undue condemnation of innocence. The power of granting pardons, which is wholly and solely vested in the Crown has been styled its most amiable prerogative, and is the last and surest resort for

an unfortunate culprit, whose case may present circumstances which merit favorable consideration.

The evidence upon which a Grand Jury is to proceed must be legal evidence. Witnesses are sworn in open Court to testify before you on each Bill, of Indictment; an evidence of what other persons have said is in no case admissible. Neither is the testimony of incompetent witnesses sufficient to support an indictment, such for instance as have been convicted of an infamous crime—Quakers and Moravians are by a late Act of Assembly (9th and 10th Geo. IV. c. 9.) allowed to give evidence in all cases criminal as well as civil, upon their solemn affirmation, which before that act was not admitted in any criminal cause extending to life or limb. Prosecutors in all cases, however injured by the crime are competent witnesses, because the finding of the Jury in the criminal prosecution cannot be evidence in their favor in any civil action, the criminal proceeding being regarded as carried on for the public benefit, and not for the gratification of private feelings, or the recovery of private property. Until very lately there was an exception to this rule in the case of forgery, the party whose name was forged not being admitted as a witness in the prosecution for the offence. This however was considered as an anomaly in the law of evidence, and has been remedied in this Province by an Act of Assembly to which I have before referred—passed in the year 1829, which following a late English Statute on the same subject, provides that in prosecutions for forgery no person shall be deemed an incompetent witness by reason of any supposed interest in the matter.

In all your proceedings you will pay careful attention to the oath you have taken, which contains a distinct epitome of your duty. You are to keep secret the King's Council, your fellows, and your own—that is, the evidence laid before you on the part of the Crown, and the debates and opinions of the Jury Room. The result of your deliberations alone is to be disclosed by your returns to the Court. In these deliberations you are not to yield to the influence of prejudice, passion, or any unworthy motive; you are to be fearless and impartial.

You can bring to the notice of the Court by presentment any offences that come within your own knowledge or observation, but Bills of Indictment must be prepared and found before the parties presented can be put to answer. The cases in which such presentments are usually made are public nuisances and the like. These are indeed in general more conveniently attended to at the Sessions of the Peace, but it is quite competent for you to make such presentments to this Court, in any case that you may think of sufficient importance to require it.

It is a positive rule founded on the same immemorial usage, which prescribes a jury, not only that in the case of petty juries, which consist of twelve, the whole number must unite in the verdict, but that there can be no finding of a Grand Jury, unless the same number of twelve shall concur in it, and twelve will always form a majority of your number.

Having made these general observations upon the laws under which we live, the constitution of the Court at which we are now assembled, the nature of your office, and the outlines of your duty, I proceed to a more particular consideration of the subjects to which you are to direct your attention.

You are returned to inquire for the body of this City and County, and your charge is, to present all offences of whatever degree, from the highest to the lowest, committed within the City and County, that may come to your knowledge.

By a statute passed in the reign of Philip and Mary, which has always been deemed in force and acted upon in this Province, Justices of the Peace are required, before they commit any prisoner for felony, to take the examination of the prisoner, and the evidence of the witnesses who can speak to the matter, and to put the same in writing, and to certify the same to the next Court of Gaol Delivery. They are also required to bind by recognizance all material witnesses to appear at such Court to give evidence, and in like manner to certify to the Court the recognizances of such witnesses, which are also to be in writing.

This is one of the most important branches of the duty of a Justice of the Peace. Upon a skillful and faithful execution of it, the satisfactory administration of criminal justice essentially depends. The investigation of the circumstances of a crime, will always be most easy and effectual while the facts are recent.—Witnesses make their narration in the first instance, without being so liable to the influence of those impressions of pity or of revenge, to which the interval before the trial would leave them open, and the first narration remains on record to keep them to the truth. Their appearance at the Court is secured under a pecuniary penalty, and in case of their being dead, or unable to travel, or kept away by the contrivance of the prisoner, their depositions may be read in evidence. These depositions moreover, being returned to the Court, enable the Judge to instruct the Grand Jury upon the nature of the several offences which they will have to consider, and the Crown Officer to frame the indictment and to conduct the prosecution in such manner as will best answer the ends of Justice.

The Sheriff's Calendar presents a list of six Prisoners—one being for a Homicide, the remainder for Larceny or Theft.

Homicide, or destroying the life of Man, is by the writers on the Law of England, divided into three kinds—justifiable, excusable, and felonious; and so various are the circumstances under which the destruction of life may occur, that it is oftentimes a matter of nice discrimination to determine to which class an individual case may belong.

A Homicide may be justified by the command of the Law, as when a malefactor is put to death in execution of public justice;—or by the permission of law, as when an officer in the due execution of his office, is assaulted and resisted, and is constrained, in order to overcome such resistance, to kill the person that opposes him; or when any person, in order to prevent the commission of a forcible and atrocious crime, such as a Murder, Robbery, or the like, kills the person so attempting to commit such crime.

Homicide is of that class which the law calls *excusable*, when it is purely the effect of accident, without any fault in the party killing, or when it is necessarily committed in self-defence.

Felonious Homicide is either Manslaughter or Murder.

Manslaughter is the unlawful killing of another without malice; and Murder is the destruction of human life, with malice, either express or implied—Malice, the distinguishing criterion between Manslaughter and Murder, in its legal sense, is not confined to a desire of revenge, or a settled anger against an individual, but signifies any evil or mischievous disposition of the heart, or may be described negatively as importing the absence of all just cause, excuse, or alleviation.

In the case which will be presented for your consideration, if you find that the act which pro-